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SMALL AND DISADVANTAGED BUSINESS PARTICIPATION IN MILITARY CONSTRUCTION PROGRAMS

HEARING

BEFORE THE

MILITARY INSTALLATIONS AND FACILITIES SUBCOMMITTEE

OF THE

COMMITTEE ON ARMED SERVICES HOUSE OF REPRESENTATIVES

NINETY-NINTH CONGRESS

FIRST SESSION

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SMALL AND DISADVANTAGED BUSINESS PARTICIPATION IN MILITARY CONSTRUCTION PROGRAMS

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
MILITARY INSTALLATIONS AND
FACILITIES SUBCOMMITTEE,
Washington, DC, Thursday, September 26, 1985.

The subcommittee met, pursuant to call, at 10 a.m., in room 2118, Rayburn House Office Building, the Honorable Ronald V. Dellums (chairman of the subcommittee) presiding.

OPENING STATEMENT OF HON. RONALD V. DELLUMS, A REPRESENTATIVE FROM CALIFORNIA, CHAIRMAN, MILITARY INSTALLATIONS AND FACILITIES SUBCOMMITTEE

Mr. DELLUMS. The Subcommittee on Military Installations and Facilities will come to order.

Today the subcommittee is holding an oversight hearing to look into the extent of the involvement of small and disadvantaged businesses in our military construction programs.

We will be examining the current law, regulations, and practices which define their participation and looking at the impact their involvement has on the effective operation of this program.

We hope to develop a record of just how these programs presently work, as well as explore ways to correct identified problem which may hamper the performance of these businesses.

It is our expectation that the hearing today will provide answers to some of the following questions:

First. Are they—both small and disadvantaged businesses—getting a fair share of the total awards for construction projects authorized by this subcommittee?

Second. How are size standards for small businesses determined and are they appropriate?

Third. What has been the effect on small architect-engineering firms as a result of the $85,000 cap on setasides?

Fourth. Should awards within the 8(a) program be made competitively?

Fifth. What assistance does the Department of Defense give to small and disadvantaged business firms wishing to compete for these overseas contracts? Why can't some awards be set aside for small and disadvantaged businesses?

Sixth. Is there a requirement for the truly large architect-engineering and construction contract to subcontract with small and disadvantaged business firms? If so, how does it work?

Seventh. Should there be a percent limit as to how much of any one industry can be set aside for small businesses?

These and many more questions will be asked during this hearing.

It is my firm belief that since all segments of our society are called upon to serve in the military as well as finance its budget, that all segments of the society have the right to share in its economic benefits.

I note the timely arrival of the distinguished gentleman from Alabama, who is the ranking member of the full Armed Services Committee and a member of the subcommittee, and the Chair would yield to my distinguished colleague for such comments as he may deem appropriate at this time.

STATEMENT OF HON. WILLIAM L. DICKINSON, A REPRESENTATIVE FROM ALABAMA

Mr. DICKINSON. Thank you.

I think it is very timely that we have these hearings. There was a provision in the House bill, the full bill, that went into conference that set aside a specific amount for minority enterprises across the board, not just military construction, with which I didn't agree. I thought it was excessive. Anyway, its philosophy is there and we certainly need to make sure that everyone has an equal opportunity to participate and to benefit on a competitive basis.

I think the hearings are a good idea to vent the problem and discuss it and hear from all sides and I would like to compliment the Chair for calling these hearings and we will see what flows from them.

Thank you.

Mr. DELLUMS. I thank the gentleman for his remarks.

I call our first witness, the gentleman from Texas, the Honorable Albert G. Bustamante, a friend colleague on the Armed Services Committee. The Chair would like to welcome the gentleman before the subcommittee this morning. We will note that we have the full text of the gentleman's comments and without objection, they will appear at the appropriate point in the record.

The Chair yields to the gentleman. You may proceed in any fashion you choose.

STATEMENT OF HON. ALBERT G. BUSTAMANTE, A REPRESENTATIVE FROM TEXAS

Mr. BUSTAMANTE. Thank you, Mr. Chairman, Mr. Dickinson. Let me thank you for accepting my request to appear before you today and to offer testimony regarding Hispanic involvement in military construction programs.

Last week I participated in a hearing on the state of Hispanic small business, held by the Small Business Committee on occasion of Hispanic Heritage Week. During the course of that hearing I learned about the many opportunities and the many difficulties which Hispanic firms face when doing business with the Department of Defense. Today's oversight hearing on the minority involvement in military construction programs should complement

and deepen our understanding of the state of minority defense procurement.

Today's assessment of Department of Defense efforts to develop a more diversified and broad base of contractors should allow us to evaluate the department's success in implementing our Nation's policy to increase and preserve competition in the marketplce while promoting the opportunity of all to compete in our economy.

I want to thank the subcommittee for conducting this oversight hearing on minority small business participation in military construction programs. I hope that my testimony, together with the testimony presented by today's panel, will demonstrate the need of the Federal Government to increase small and minority business contracts. The Government by building productive capacity of minority business will increase competition by expanding the market of available and capable suppliers.

Finally, I commend the subcommittee for reaffirming our commitment to full economic parity for all American business.

Mr. Chairman, I would appreciate having my prepared statement included in the record.

Mr. DELLUMS. Without objection, so ordered.

PREPARED STATEMENT OF HON. ALBERT G. BUSTAMANTE

Mr. Chairman and members of the subcommittee, I want to thank you for accepting my request to appear before you today and to offer testimony regarding Hispanic involvement in military construction programs.

Last week, I participated in a hearing on the state of Hispanic small business, held by the Small Business Committee on occasion of Hispanic Heritage Week. During the course of that hearing I learned about the many opportunities and the many difficulties which Hispanic firms face when doing business with the Department of Defense. Today's oversight hearing on the minority involvement in military construction programs should complement and deepen our understanding of the state of minority defense procurement. Today's assessment of Defense Department efforts to develop a more diversified and broad base of contractors should allow us to evaluate the Departments success in implementing our Nation's policy to increase and preserve competition in the marketplace while promoting the opportunity of all to compete in our economy.

Testimony presented at the hearing on the State of Hispanic small business illustrated the difficulty Hispanic businesses have in participating in the Federal procurement system. The difficulty of Hispanic business participation in the Federal procurement system further reflects the difficulties of all minorities in Federal procurement.

In fiscal year 1984, the Federal Government issued over $166 billion in contracts. Out of this total, $2.7 billion in contracts were awarded to 8(a) businesses or 1.6 percent of the total. From this relatively small portion of procurement dollars, Hispanic 8(a) businesses received a total of $700 million or 0.4 percent of total Government procurement. The size of Hispanic Government procurement is dramatically affected by the size of Defense Department procurement. For out of a total of $700 million in Hispanic 8(a) procurement, the Defense Department is responsible for over $531 million, or 75 percent. This further translates into 0.4 percent out of $133 billion in total Defense procurement. To put the reach of the 8(a) program in perspective, there are only 694 Hispanic 8(a) firms out of approximately 363,000 Hispanic-owned firms with total sales of $18 billion.

In the construction sector Hispanics are not faring better. Over 260 Hispanic 8(a) construction firms are estimated to have received about $86 million in the entire 8(a) program in fiscal 1984. These numbers are meager when compared with the most recently available Government statistics on Hispanic construction firms. According to the 1977 survey of Minority-Owned Business Enterprises there were 27,176 Hispanic construction firms which accounted then for $1,226,007.00 in gross receipts. Even if one were not to account for how dated these statistics are, it is clear that Federal minority construction programs have barely reached their intended population.

On the positive side, the minority share of military construction has grown from $255 million, or 0.6 percent of the total, in fiscal year 1980 to $713 million, or 1.1 percent of the total, in fiscal year 1984. While this growth is welcome news, it hides an underlying problem. To illustrate this problem, we will examine 8(a) construction contracts with the Army. In fiscal 1981 the Army negotiated 577 8(a) contracts for construction totaling $234,896,869 and in fiscal 1984 it negotiated 568 8(a) construction contracts for a total of $305,927,207. As these figures indicate, between fiscal year 1981 and fiscal year 1984, the value of Army construction 8(a) contracts increased by roughly 30 percent while the total number of contracts declined by about 2 percent. Under this trend one can assume that fewer contractors are getting more dollars. While one of the goals of Federal minority contracting is to develop minority businesses and one sure sign of development is the capacity of business to handle larger contracts, this trend of a shrinking pool of contracts reinforces concerns over the limited reach of Government minority contracting.

Several factors have been identified which limit the scope of the Government's minority contracting program. I will confine my presentation to those factors that were brought to my attention at the hearing on Hispanic business.

Hispanic firms have difficulties in obtaining 8(a) certification. Hispanic construction firms claim they are discouraged by SBA district and regional officials to apply for 8(a) certification since officials complain that their portfolios are saturated with construction enterprises.

Should a minority business obtain 8(a) certification, the next major hurdle is to secure bonding. The problem is acute since to acquire bonding a firm needs a good track record and high levels of cash, an impossible task for new businesses. And, the Small Business Administration does not assist these new firms in securing bonding.

Hispanic construction firms find that local SBA coordinators with the military services usually do not have expertise in construction. As a result, they concentrate on obtaining janitorial or food service contracts from the military services. Therefore, Hispanic 8(a) construction firms are losing valuable opportunities.

I want to thank the subcommittee for conducting an oversight hearing on minority and small business participation in military construction programs. I hope that my testimony, together with the testimony presented by today's panel, will demonstrate the need of the Federal Government to increase small and minority business contracting. The Government, by building the productive capacity of minority business, will incease competition by expanding the market of available and capable suppliers. Finally, I commend the subcommittee for reaffirming our commitment to full economic parity for all American businesses.

Thank you.

Mr. DELLUMS. Does that conclude the gentleman's statement?

Mr. BUSTAMANTE. Yes sir.

Mr. DELLUMS. The Chair would like to invite my colleague, who is a member of the full Armed Services Committee to sit this morning on this subcommittee. We note the gentleman's concern and great interest in this matter, and the Chair, on behalf of myself and the members of the subcommittee would deeply appreciate the gentlemans' expertise in this area. We welcome him to join us in the panel and stay and fully participate in these hearings to the extent that the gentleman chooses to do so.

Mr. BUSTAMANTE. Mr. Chairman, thank you. I would be happy to do so.

Mr. DELLUMS. The Chair would like to note it is 10:09. There are two bells calling the members to record their vote on a Senate resolution dealing with interstate compact and the subcommittee would recess for 10 minutes and reconvene at that time.

The Chair would like to bring forward our next witness, the distinguished gentleman from Iowa, the Honorable Berkley Bedell. The Chair, on behalf of myself and the members of the committee, would like to welcome our distinguished colleague before the subcommittee and the gentleman may proceed in any fashion he chooses.

STATEMENT OF HON. BERKLEY BEDELL, A REPRESENTATIVE FROM IOWA

Mr. BEDELL. Thank you, Mr. Chairman.

I have a prepared statement I would like to enter into the record and summarize in order to save time.

Mr. DELLUMS. Without objection, the full text of the gentleman's statement will appear at the appropriate point in the record and please proceed.

Mr. BEDELL. I would like to testify in regard to two particular items that appear to me to be a problem to small and disadvantaged businesses as they compete for architect-engineering services for the military.

The first item that I would like to talk about is the $85,000 cap that exists at the time on what can be set aside for small business. Previously, there was no cap and it was at the discretion of the Secretary. Many of the large firms in industry supported this cap because they believed that the Small Business Administration was defining some larger firms as small.

Mr. Chairman, I agree with that, and the Small Business Committee has now proposed to the Office of Management and Budget and Office of Management and Budget has agreed to lower the size standard for small business for architect and engineering firms so that the cap would not affect as many firms.

Some of the middle sized firms were claiming that unless you put a cap on anything with set aside for small business they couldn't bid on and it was therefore unfair to those firms. As it is now, the larger firms represent 1.5 percent of the firms and they get 31 percent of the dollars, and 18 percent of the contracts. So it is pretty hard to argue that the large firms are being improperly treated.

The problem with the cap, $85,000 cap, is that when they award a contract, most of these fees are a percentage of cost, and they don't know what the cost will be for sure, so if you put a cap there, the department has to protect itself very, very much, for possible overruns in the cost of the construction of the proposal so they can't consider setting aside items that would otherwise be advantageous to the military and to the small and disadvantaged businesses concerns.

The second concern is a concern that I have had for a long time, and that is that under current legislation, the Government cannot consider cost in the selection of the firm with whom it is going to negotiate. I know of no other area where that is the case in our society or in Government. Many of us have been working to try to do something to bring control of Government expenditures in other areas.

I agree completely that you should not award engineers and architects fees according to cost. If you are going to give it to the low bidder I think you have both problems. You have problems anywhere, nobody would argue that. Except I don't know of any firm that wouldn't consider cost in their selection of architects. I have served on a church board; I have served on a hospital board; I have served on a school board, each of which built buildings, and certainly at that time one of the considerations we had in the selection of the architect was what their fee would be.

The various proposals that come forth—first of all in 1972, the Committee on Government Procurement recommended that price be considered as a secondary factor in architect and engineering source selection. That was in 1972. In 1976 GAO, found that this law had not made any procurement more competitive and recommended the Government award any contracts on the basis of best value in terms of design performance and life cycle costs.

In January 1985, a report by the OMB's Office of Federal Procurement Policy required by the Competition and Contracting Act recommended a very limited test program in which the three most qualified firms would be given a detailed briefing on the proposed project, and then invited to submit technical and price proposals simultaneously in separate envelopes.

The technical proposals would be opened first and ranked on the basis of technical merit, then the cost proposals would be opened and matched with the technical proposals. The Government could then select the technically top ranked firm if it clearly represented the best value, or failing successful negotiations with the top ranked firm, could negotiate with the next highest ranked firm.

I believe that the Office of Federal Procurement Policy proposal addresses the legitimate concern that engaging the services of an experienced design professional is very different from buying spare parts. As former House Government Operations Committee Chairman Chet Holifield wrote in his dissent to the Brooks Act committee report in 1972:

"Great fears have been expressed that, if competitive proposals are required for each project, then the competition will inevitably become one of price bidding; and that the government, in consequence, will be driven to select the inferior firm with the lowest offer at great risk to the quality of performance. The argument frequently is cast in terms of advertising for sealed bids. In my opinion, this is a complete bugaboo."

No one is suggesting.

* * * that professional services of this kind be purchased through advertising and sealed bids. * * * The real point is that, unless the government has an opportunity to receive and evaluate competing proposals for the best way to get a job done, it will not be able to assure itself that the public interest is fully served.

Mr. Chairman, we want to do things to help. We want to try to do what we can. At least, it seems to me, the current program where you really select the architect completely based upon qualification, gives no chance in the world for somebody new that may be doing a better job, or get into the process, and I think this is the concern of this hearing.

Thank you, Mr. Chairman.

PREPARED STATEMENT OF HON. BERKLEY BEDELL

Mr. Chairman and members of the Subcommittee, as a member of the Small Business Committee, I very much appreciate the opportunity to participate in these important hearings on the involvement of small and disadvantaged businesses in military construction programs.

I would like to address two issues in the federal procurement of architectural and engineering (A/E) services. First, there is overwhelming statistical evidence that the small business set-aside program for A/E military construction contracts is not helping small businesses the way Congress intended. The set-aside program has been gutted by a restriction that arbitrarily suspends the Small Business Act. This restriction, a ceiling of $85,000 on the size of A/E individual contracts that can be set aside, should be repealed immediately. Second, on a completely different issue, the

Office of Federal Procurement Policy (OFPP) has recommended that Congress authorize a limited program to test alternative A/E source selection procedures. The OFPP's recommended alternative is quite modest and should be given a try.

Neither of these proposals is my idea, and neither of them is a new idea. Rather, they were recommended in reports to Congress by the Office of Federal Procurement Policy and the Department of Defense. These reports were required by legislation enacted by this Committee and by the Government Operations Committee respectively. These hearings are important because they provide these reports the consideration they deserve.

There are 15,250 firms in the general construction area of the A/E industry, which excludes naval A/E. According to the most recent Department of Defense (DOD) statistics, the very largest 1.5 percent of firms (i.e. 250 firms) in this industry are now receiving 18 percent of contract awards, and 31 percent of the contract dollars awarded. Due to a provision inserted by the Senate in the fiscal 1985 Military Construction Act (PL 98-407), the percentage of contracts and contract dollars that is set aside for competition among small businesses has been cut in half in the last year. Section 808 of that Act provided that no A/E contract that is estimated to exceed $85,000 will be set aside for competition exclusively among small businesses. In practice, DOD does not set aside contracts over $55,000, for fear that they might exceed the threshold amount after later modifications.

Many of the largest firms in the A/E industry supported imposition of this $85,000 ceiling because they believed that the Small Business Administration was defining some rather large firms as "small". These firms were then eligible for small business set-asides. I and the House Small Business Committee have long shared the view that the size standard for a "small" A/E firm is far too high. In fact, the Small Business Committee held hearings recently on the failure of the SBA to set proper size standards in some industries. Those hearings focussed on size standard reform legislation, H.R. 1178, introduced by Small Business Committee Chairman Parren Mitchell. Chairman Mitchell has indicated that the committee will mark up H.R. 1178 this fall, and I assure this Subcommittee that the Small Business Committee will continue to act to achieve proper size standards in all industries.

Regarding the A/E size standard, I was pleased that the SBA proposed on September 16 that the size standards be lowered from $7.5 million and $3.5 million in annual billings (for the engineering and architectural industries respectively) to $1.5 million. Although I think that the SBA has now proposed a standard that may be too low, the important thing is that the issue is being addressed.

It is now time to repeal the $85,000 ceiling on contract size. The section of law that imposed this threshold amount authorizes the Secretary of Defense to revise the threshold amount effective October 1 of this year in order to ensure that small businesses receive a fair share of A/E contracts. Regardless of the number that DOD would propose, I reject this entire approach to small business set-asides. So does the Department of Defense. Public Law 98-115, the Military Construction Authorization Act, 1984, directed DOD to conduct a comprehensive review of its A/E procurement program in order to determine whether current law results in a fair distribution of contracts to firms of all sizes. In his report to Congress, Secretary Weinberger stated, "The establishment of a 'reasonable threshold amount' will not result, in our view, in 'reasonable share distribution.' We believe that an appropriate size standard will accomplish that objective." I attach a copy of the Secretary's report and ask that it be included in the record.

THE BROOKS ACT

In 1967, the U.S. General Accounting Office (GAO) ruled that the government's traditional method of selecting A/E firms did not comply with the statutory mandate for "competitive negotiations" because price was not a factor. Enacted in response to this ruling and with the stated purpose of making A/E procurement more competitive, Public Law 92-582 (the Brooks Act), essentially codified the traditional method of A/E selection. It prohibits the consideration of price until the government has chosen the firm with which it will negotiate. In 1972, the Commission on Government Procurement recommended that price be considered as a secondary factor in A/E source selection. In 1976, the GAO found that PL 92-582 had not made A/E procurement more competitive and recommended that the government award A/E contracts on the basis of the best value in terms of design performance and life-cycle cost.

In January 1985, a report by the OMB's Office of Federal Procurement Policy (OFPP) required by the Competition in Contracting Act recommended a very limited

test program in which the three "most qualified" firms would be given a detailed briefing on the proposed project, and then invited to submit technical and price proposals simultaneously in separate envelopes. The technical proposals would be opened first and ranked on the basis of technical merit, then the cost proposals would be opened and matched with the technical proposals. The government could then select the technically top-ranked firm if it clearly represented the best value, or (failing successful negotiations with the top-ranked firm) could negotiate with the next-highest ranked firm.

I believe Congress should now authorize the limited test program recommended by OFPP. The Department of Defense has also indicated that a test program would be appropriate. I attach a copy of a letter from DOD on this matter and ask that it be included in the record. I would like to make it clear that I remain strongly opposed to any A/E selection procedure based solely or primarily on price.

I believe that the OFPP proposal addresses the legitimate concern that engaging the services of an experienced design professional is very different from buying spare parts. As former House Government Operations Committee Chairman Chet Holifield wrote in his dissent to the Brooks Act committee report in 1972, "Great fears have been expressed that, if competitive proposals are required for each project, then the competition will inevitably become one of price bidding; and that the Government, in consequence, will be driven to select the inferior firm with the lowest offer at great risk to the quality of performance. The argument frequently is cast in terms of advertising for sealed bids. In my opinion this is a complete bugaboo." No one is suggesting, ". . . that professional services of this kind be purchased through advertising and sealed bids. . . . The real point is that, unless the Government has an opportunity to receive and evaluate competing proposals for the best way to get a job done, it will not be able to assure itself that the public interest is fully served."

Thank you.

Attachment A

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OFFICE OF FEDERAL PROCUREMENT POLICY

January 2, 1985

TO THE CHAIRMEN OF THE COMMITTEE ON GOVERNMENTAL AFFAIRS OF THE U.S. SENATE AND THE COMMITTEE ON GOVERNMENT OPERATIONS OF THE U.S. HOUSE OF REPRESENTATIVES

This report is respectfully submitted in accordance with Section 2753 of the Competition in Contracting Act of 1984, P.L. 98-369. The report contains recommendations and a proposed test plan for increasing competition in the procurement of professional services.

Sincerely,

Donald E. Sowle

Donald E. Sowle
Administrator

EXECUTIVE SUMMARY

This report is required by Section 2753 of the Competition in Contracting Act of 1984, P.L. 98-369. Section 2753 of P.L. 98-369 directs the Administrator, Office of Federal Procurement Policy (OFPP), to study alternatives and recommend to the Committees on Governmental Affairs and Government Operations a plan to increase opportunities to achieve full and open competition on the basis of technical qualifications, quality, and other factors in the procurement of professional, managerial, and technical services.

At the outset of the study, OFPP convened an interagency study group, consisting of representatives from several agencies and departments, including the Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration. A Federal Register notice was published on August 29, 1984, requesting agency and private sector views, and a public meeting on the study was held on September 13, 1984. In addition, purchasing officials in several states were canvassed to obtain their views on contracting for professional services, and special meetings were held with organizations representing surveyors and mappers, real estate appraisers, and soils consultants.

Professional, technical, and managerial services are not defined in statute or regulation. For purposes of the study, the terms were considered synonymous and were held to include any service not requiring a wage rate determination under the Service Contract Act. Examples of "professional services" are provided in Appendix C of the study report.

During fiscal year 1983, the Federal Government awarded more than 227,000 contracting actions for various types of professional, technical, and managerial services. These contracting actions have a combined value in excess of $70 billion and account for about 41 percent of the Government's total procurement outlays of almost $170 billion. Approximately 51 percent of the 227,000 actions were awarded competitively. The competitive awards accounted for 42 percent ($29.4 billion) of the $70 billion in service awards.

The basic finding resulting from the study is that contracting for professional services is viewed differently by the Government than by certain private organizations and interests. The Government contracting community is, for the most part, satisfied with the present contracting process. Contracting officials stated that current procedures provide for the proper consideration of both cost and technical factors and that contract award can now be made on the basis of technical and quality factors when appropriate to do so. Private trade associations and organizations, representing surveyors, mappers, real estate appraisers, and soils consultants, aren't satisfied with present practices. The surveyors, mappers, and soils consultants want the services offered by their respective professions to be acquired pursuant to the contracting process specified in Public Law 92-582, the "Brooks Architect-Engineer Act."

In comparison, real estate appraiser and other associations, generally, indicated that the present system is workable, but that training is required to resolve several common problems. These problems are: (1) the tendency of price to dominate in the contractor selection process; (2) the difficulty of developing good statements of work; (3) the use of procedures that result in technical leveling; (4) the lack of cost realism and the occurrence of buy-ins; (5) the shortage of highly trained contracting personnel; and (6) the length of time required to award a contract. The report discusses each of these "problems" and proposes an alternative contracting methodology and test plan.

The recommended approach views professional services as existing along a continuum. At one end of the continuum are those services which are frequently procured, clearly defined and are standard, simple, and require no unique or novel approaches. Price is proposed as the paramount selection criterion for these services. The report recognizes that technical considerations should be the paramount selection factor for services at the other end of the continuum; i.e., where the requirement can only be broadly defined and the services sought require a high degree of innovation, are exceedingly complex, and the most highly qualified firm is desired. The report views many services as existing in the middle of the continuum and recommends that, for these services, both price and technical considerations be considered in the selection of a particular contractor to perform the service. The requirements in the middle of the continuum are for those services that are moderately complex, involve some degree of innovation and ingenuity, and are not susceptible to a contractor selection process based either on "price" or "technical factors" alone.

The recommended alternative proposes the use of existing contracting methodologies for requirements that can be awarded on the basis of either "price" or on the basis of both "technical merit" and "price." The existing methodologies would, however, be improved through training to avoid the problems identified by the various private firms and organizations. The process proposed for selecting contractors, where the selection is to be made on the basis of technical or quality factors, is patterned after the current process embodied in Public Law 92-582. The main exception is that market information (prices) will be obtained from more than one firm prior to the selection of the contractor. This process will also rely heavily on training. Its main advantages are that it will control the degree and point in time at which price is factored into the selection process, and it will provide comparative market prices to help assure that accepted prices are fair and reasonable.

The test plan proposed in the report recommends testing the proposed alternative at seven contracting activities. These activities will be selected on the basis of recommendations received from interested persons, industry groups, and Government agencies. Training will be given at each of the selected activities prior to the initiation of the test, and the test, as proposed, will be limited to contracts estimated to cost between $25,000 and $1 million. One of the major objectives of the test is to shorten the current acquisition cycle for many service contracts to 125 days or less. The test plan proposes a model schedule to accomplish this goal and recommends several factors to assess the proposed test upon its completion. The test will require waiver of P.L. 92-582 (86 Stat. 1278; 40 USC 541 et seq.) and the procurement notice provisions found in Section 18 of the Office of Federal Procurement Policy Act (41 USC 416) and subsections 8(e), (f), and (g) of the Small Business Act (15 USC 637(e), (f), (g)).

THE SECRETARY OF DEFENSE

WASHINGTON, THE DISTRICT OF COLUMBIA

Attachment B

MAR 21 1984

5 MAR 1984

Honorable Parren J. Mitchell
Chairman, Committee on Small Business
House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

Public Law 98-115, the Department of Defense (DoD) Military Construction Authorization Act, 1984, requires the DoD to conduct a comprehensive review of its architectural and engineering (A&E) procurement program in order to determine whether current policies and practices of the Department result in a reasonable distribution of A&E contracts to firms of all sizes. The law also states that the Secretary of Defense, after consultation with the Small Business Administration and representatives of the A&E community, is to determine: (1) what is a "reasonable share" of awards to be made to small business concerns; and (2) what is a "reasonable threshold amount" above which large A&E firms should not be precluded from competition (See Enclosure 1).

In order to accomplish this requirement, we consulted with large, medimum and small sized business firms and with representatives of the Small Business Administration. As might be expected, there were differing views, many at variance with each other, regarding DoD's implementation of its small business set-aside program. The enclosures describe in detail the results of our review which conclude the following:

1. DoD's current implementation of set-asides in support of small business is statutorily authorized and correctly implemented through the Defense Acquisition Regulation.

2. DoD's implementation of the set-aside program has been supported by the courts and the GAO.

3. Quality performance of our requirements is not jeopardized by our current procedures, nor is mobilization readiness impaired.

4. The establishment of a "reasonable threshold amount" will not result, in our view, in "reasonable share distribution." We believe that an appropriate size standard will accomplish that objective.

5. Based on our consultations, a reduced size standard is indicated for this industry.

The Small Business and Small Disadvantaged Business Utilization Program is an important and complex program and as such the issues raised by the committee required considerable legal and policy review. We regret the delay in providing this report.

We appreciate this opportunity to be of service to you and your committee.

Sincerely,

Attachment
a/s

Attachment C

OFFICE OF THE UNDER SECRETARY OF DEFENSE

WASHINGTON D C 20301-3060

RESEARCH AND
ENGINEERING
(AM/CP)

28 JUN 1985

Honorable Berkley Bedell
House of Representatives
Washington, D.C. 20515

Dear Mr. Bedell:

This responds to your letter of June 3, 1985, to the Secretary of Defense concerning proposed amendments to existing law relating to the award of architect-engineering (A-E) contracts. It is understood, as the result of discussions between our staffs, that you no longer intend to pursue this matter as a legislative proposal, but that you still would appreciate our comments to assist you in your examination of A-E contracting.

Your proposal was for the DoD to consider fees in the award of A-E contracts while retaining the professional capability of A-E firms as the primary source selection criterion. It would also have permitted the Secretary of Defense to establish a sliding scale of fees and would have eliminated the current $85,000 ceiling for small business set-asides for A-E work.

The current method of selecting A-E firms for the award of contracts has been very effective in assuring the quality of such professional efforts. We also feel that the establishment of a government estimate for the work and the legally mandated ceiling for fees has worked well in assuring that the prices we pay for A-E efforts are not unreasonable. Nevertheless, the proposal to consider fees in the award of A-E contracts appears to merit consideration. The means of accomplishing this, however, will require the most careful analysis and assessment of impact to assure that the professional capability of the A-E firms remains the prime consideration and that the contracting process is not unduly burdened by cumbersome and lengthy evaluation procedures. One means of accomplishing this would be to use a "two-step" approach in which A-E firms are initially evaluated on the basis of technical competency, just as they are now, with the top three firms being invited to submit priced bids. Final selection of the firm to be awarded a contract would be based on price. Despite the apparent feasibility of this approach, we are concerned that we may not always be able to specify a concept in sufficient detail to allow A-E firms to submit a realistic fee. We, therefore, suggest that a period for testing various approaches be provided before a

final decision is made to abandon existing procedures. Should efforts to implement this proposal prove to be impracticable, an inability to revert quickly to existing procedures could have adverse impact on military construction programs including those relating to certain major weapons systems.

Both the proposal to grant the Secretary of Defense authority to establish a sliding scale for fees and the proposal to eliminate the $85,000 ceiling for small business set-asides are consistent with our belief that statutes should provide flexibility for regulatory implementation.

It is recognized that the existing ceiling for fees is one means that is used to assure that the prices paid for A-E services under the present system are fair and reasonable. It is rigid, however, and may well be inadequate to attract the best A-E firms to certain projects with a low dollar value. Therefore, a range for fees could be of advantage.

We would support elimination of the $85,000 ceiling for small business set-asides for A-E work. Allocation of the A-E requirements between big business and small business should not be established by arbitrary ceilings established in law. This allocation should be accomplished by the level at which the Small Business Administration establishes size standards for small businesses.

We hope that our comments will assist you in your examination of A-E contracting methods.

Sincerely,

Mary Ann Gilleece

MARY ANN GILLEECE
DEPUTY UNDER SECRETARY
(ACQUISITION MANAGEMENT)

Mr. DELLUMS. Does that conclude the gentleman's statement?

Mr. BEDELL. Yes sir.

Mr. DELLUMS. I thank the gentleman for his remarks and the gentleman would yield to the gentleman from Alabama for such time as he may consume.

Mr. DICKINSON. Thank you, Mr. Chairman.

I think I understand the concern of the gentleman and the same concern sort of permeates the entire defense establishment in doing business, even though some of them do go by the low dollar. Those that have contracts think it is a pretty good system.

Mr. BEDELL. Sure.

Mr. DICKINSON. And those that have the contracts didn't always have the contracts. They come to me and they come to others and say hey, we would like to be considered. I am an architect firm, we are young, we are coming on, and we would like a shot at this. So, I and other members and so forth contact the Corps of Engineers, whoever is letting the contracts, and say why don't you consider this firm and they say, well, we will be glad to look at them. Sooner or later they almost inevitably are given some work. It might not be the first year, but the second year, and it is just not the type of business that lends itself to just a flat dollar bid.

I am wondering if you would reiterate—I noticed that you had three numbered things—how do you think it would be best done different from what we are doing now? What are you recommending?

Mr. BEDELL. The proposal that came from OMB, for example, was——

Mr. DICKINSON. We are talking architects now?

Mr. BEDELL. Yes sir.

Mr. DICKINSON. Contractors.

Mr. BEDELL. We are talking about architects and engineers. The proposal was that firms submit their proposal in writing, as to what they would propose and their qualifications, and then a separate envelope with what their fee would be. Then the first one be opened first that be given primary consideration. I think that is right normally. If you go to buy something you look at what the quality will be and you look at that first. Then I guess the question is, if the proposals are of equal merit, and equal consideration, is there some reason that the taxpayers that we shouldn't pay the lowest cost for the same proposal?

Mr. DICKINSON. Well, somewhere in here, you have left out experience and competence.

Mr. BEDELL. No, I said that would be included.

Mr. DICKINSON. You didn't say that.

Mr. BEDELL. Qualifications.

Mr. DICKINSON. You open the envelope to see what they would be, what they proposed to do, and so forth.

Mr. BEDELL. No, I said and qualifications.

Mr. DICKINSON. OK.

Mr. BEDELL. And qualifications, experience and competence. I agree with that. It should be in there.

Mr. DICKINSON. So, and that is, well, maybe subjective, maybe objective type of thing—how you judge these people. Then, you see,

one of the problems, in leaving this area and going into—I am just being the devil's advocate——

Mr. BEDELL. I appreciate that.

Mr. DICKINSON. I am not saying you are wrong, I am pointing to some of the problems that have been faced and are being faced regularly. Somebody makes a proposal and they are young, a young architect and engineering firm and they really don't have a long track record that you can judge them with, but they say well, we are associated with so and so, this is very prevalent construction. They will win the minority contract, for instance, and then turn it over to somebody who was disqualified to bid because they were not a minority firm, and they just take 10 percent off the top and turn it over to somebody and they do it.

I don't know how you get at that either, except that I think we all recognize that this happens on occasion. If we don't recognize it, it is because we are blind. It happens in my district and happens across the country. So how would you deal with this type of thing? Would you make it the weight or consideration of the qualification, be limited to the person or the firm making the bid, to the exclusion of them associating with another firm. How do you do that?

Mr. BEDELL. First of all, in my opinion, the firm that is doing the work ought to be the one that gets paid for what they are doing. And in my opinion, this idea that we will give, if a minority or small business is the one that is going to do the work, and should get the contract, to say they have got to do it through a big business and big business gets a writeoff and that is not in the interest of the taxpayers or the interest of our society.

This proposal, however, does not limit that, it could still continue. It does move in that direction, it would seem to me—clearly $85,000 one does, and the other one does as well—to give the smaller firms a better chance as we do in most, to build a better mousetrap, the world will beat a path to your door. If you are a small firm and doing good work and you have done some work for the Department of Defense on some other projects, then it seems to me that if you are able to do that work and make a profit, and save the Government money, we should do so.

Do you know of any other area in our society where we say that you can't consider price when you are deciding who you are going to deal with? I don't know, maybe there is, Mr. Dickinson, but we say that for architect and engineering. I can understand why they don't want it changed, who would want to change if you got a law now that says price is not of consideration in services, in the selection of the person with whom you are going to negotiate for services? Any industry would like that, but it doesn't seem to me——

Mr. DICKINSON. Do you feel there have been abuses in this area, though, that we are paying more than we should be paying?

Mr. BEDELL. I don't know that. I want to be honest with you. I think that is something that needs to be looked into. I think that is a legitimate concern.

Mr. DICKINSON. Well, I don't want to take too much time here. It is a real dilemma. I don't know how you handle it either, and I can certainly understand if a guy is coming on, if he is young, a young firm, they don't have the experience behind them to establish themselves, how do you break into the system?

Mr. BEDELL. That is right.

Mr. DICKINSON. If you don't have a Congressman or a Senator that is willing to help you, what do you do? This is not limited to minorities, this is to everybody. Those that are out don't like the system and those that break in think it is a good system. They proved themselves and got on board, so it is an interesting——

Mr. BEDELL. I guess I believe our job is to protect the taxpayers and help our defense establishment as much as we can for the dollars they spend and I think we have to, when we have groups come to us and tell us you ought to do something different than that, I think we have a task that needs to be addressed as Members of Congress.

Mr. DICKINSON. Mr. Bedell, in conclusion, I can only say that this is very similar to the seniority system in the Congress. It is not worth a tinkers damn when you first get here, but the longer you stay here, you begin to appreciate the wisdom of the system.

Mr. DELLUMS. Time of the gentleman has expired.

The Chair is not going to comment on that statement.

The Chair would now recognize the gentleman from Virginia, Mr. Sisisky, for such comments——

Mr. SISISKY. I won't comment on it either, but I think I understand what the gentleman from Alabama is talking about, this being my second term.

Mr. Bedell, are you going to have a separate bill, are we going to have hearings on this bill, did I understand——

Mr. BEDELL. That was my understanding from the chair, that we would be able to have hearings on this issue. I think the gentleman and I both agree we want to be sure what we do makes some sense.

Mr. DICKINSON. Am I correct, in your bill we are going to have hearings? I think you have agreed to that.

Mr. DELLUMS. The answer to that question is yes. I would like to clarify. My colleagues plans to introduce a piece of legislation that would allow the subcommittee to hold hearings on the specific piece of legislation. The advantage of that approach is that we can then request the governmental agencies for their responses to a specific set of proposals.

Mr. BEDELL. Yes sir. This is the thing I want to get out in the open.

Mr. SISISKY. I thank the chairman for that clarification. And we are not talking about small amounts of money here. I picked up an architectural fee for a hospital in the State of Washington—some $17 million. I naively asked the question was there any price involved here, and the answer coming back was no, we are not allowed to by law to ask a price, but we can negotiate for price after we appoint the architect. It seemed a little elusive. You lose your leverage there, in my opinion.

But if I am correct, what you are talking about, I think we need to put it out on the table because I am getting a lot of calls. That price could be a consideration, am I correct in that? It doesn't have to be, they can still appoint someone as an architect?

Mr. BEDELL. Yes sir.

Mr. SISISKY. So price could be a consideration in determining the architectural or engineering firm?

Mr. BEDELL. Well, let me clearly state that what I expect to put in the legislation would be that price would be a secondary consideration, and they could select somebody other than the low bidder. I think that is the gentleman's question.

Mr. SISISKY. That is correct.

Mr. BEDELL. I want it clear, I think that is critical. I absolutely agree that for us, I believe that would be true on most all items of procurement for the military. If we just automatically said that the low bidder gets it no matter whether they can perform the task and whether their quality of work is satisfactory or not, we couldn't think of doing that, and I think it is even more true for architects and engineers, if I could say so. What they do affects what is built, the money that goes into the structure, so I absolutely agree completely. I just feel that there ought to be some opportunity for this to be a secondary factor.

Mr. DICKINSON. Sometimes we don't know how good they are until we have an earthquake.

Mr. SISISKY. That may be true of someone they appoint, too, just based on experience.

But the first part of the thing was to the ceiling—$85,000. Are you going to offer a floor amendment on that?

Mr. BEDELL. I think so.

Mr. SISISKY. Or a separate piece of legislation?

Mr. BEDELL. No, I want to clear that, but I think so, but that has been the $85,000 limitation, is not the reason we can offer it, it is not needed nearly so much now that the size standard is being corrected. The problem was that the size standard was so high before, so that almost every firm came under that size standard, that we had to get the size standard lowered in order to have fairness in the competition. Since that has been done, that we have gotten letters and everything else from the Department of Defense, and so on, saying they believe that this $85,000 cap is a problem.

Mr. SISISKY. That should take care of it.

Mr. BEDELL. No, we still need—the cap would never have been put in, I don't think if the size standard had been where it should be for architect and engineering.

Mr. SISISKY. I yield back the balance of my time.

Mr. DELLUMS. Time has expired.

Does the gentleman from Mississippi seek recognition at this time?

Mr. MONTGOMERY. No questions.

Mr. DELLUMS. Then the Chair would recognize the distinguished colleague, Mr. Bustamante, to comment for such time as the gentleman may consume.

Mr. BUSTAMANTE. No questions, Mr. Chairman.

Mr. DELLUMS. The Chair would like to ask one question.

As we indicated earlier, in response to questions from the gentleman from Virginia, we will be holding more extensive hearings on this matter, but at this time I would like to ask one question. Some people claim that by making the bidding process a two-step procedure, that that in and of itself increases the price by increasing the cost, requiring people to engage in a two-step process, to get up two proposals. Can you comment on that?

Mr. BEDELL. I sure can. I have been on the board, we constructed a church. It wasn't even a church, it was an educational building, and we had architects come before us with proposals of what they would do in regard to the plans, the fee scheduled, the whole darn thing just as to whether or not they would have a chance to get the business of building this little church.

Certainly if we are going to buy something, it is not asking too much for those that are going to perform this very, very important task, I think it is important to furnish us with the information of what they proposed to do before we select them so that—and certainly for us to say that we want them to tell us what the fee is going to be—is no big paperwork deal. I can't imagine us buying——

Mr. DELLUMS. The Chair has a very specific question. You have laid out a two-stage process and what I am asking is whether or not you believe that means that the people attempting to bid for the program must develop two different packages?

Mr. BEDELL. That is right.

Mr. DELLUMS. That means it increases their cost to do that additional work to establish the two different packages, and does this, in your estimation, mean that it increases the cost at least that we have suggested that it would. I am simply asking you to comment on that.

Mr. BEDELL. If the two package first, is what their fee would be, and the other is their qualifications and whatever they want to say about their proposal. Now, I assume that you would still want their qualifications and what they plan to do in regard to the proposal. It would be the one. If what you are going to do is tell them they also want an envelope saying what their fee is going to be, I can't see where there is any big deal—here it is, I can write it out here and hand it in.

They know what the fee they are going to propose is surely. If they don't know, how are we selecting somebody who doesn't know what they are going to charge us? If they don't know what they are going to charge us surely we are wrong to—I wouldn't think of doing that with most anything else, you wouldn't say we are going to buy this from you, we don't know what you are going to charge but we are going to buy it from you anyway.

It seems to me they have got to do it. I don't see where it is a problem to have a second envelope that tells what their fee would be.

Mr. DICKINSON. Let me say we recognize that there is a problem in this area—and this Member in particular, that is all I can speak for—would be willing to work with you, as I am sure the entire committee would. If, however, you are thinking of throwing this package out on the bill that is coming up next week—we hope it is coming up—without having us work off all the rough edges—and I would be constrained to oppose an amendment of this type because we really don't know what the ripple effect is, how it works out—so I am saying if you want to add an amendment to our military contruction bill that is coming up hopefully next week without us working out the ramifications and knowing where we are going, I would oppose it, and I would hope the committee would oppose it.

If you will, we will be willing to work with you to come up with some formula to achieve what you are seeking. In another cycle, I think we can do that, but I am just throwing that out as a caveat I suppose.

Mr. BEDELL. That is all I would ask, Mr. Dickinson, and I think I have that same indication from the chairman of the committee—under those circumstances, I indeed will not offer anything. On the $85,000 cap, I think I might offer something on that, which I think is a somewhat different issue. It certainly is as far as selection of architects and engineers. I would agree with you, we ought to know what we are doing. I don't want to push anything through because you might get the votes.

Mr. DELLUMS. The Chair appreciates the inquiry from the gentleman from Alabama.

It was the understanding of the Chair and the gentleman from Virginia that the gentleman from Iowa would withdraw the amendment from the fiscal year 1986 military construction authorization?

Mr. BEDELL. That is right.

Mr. DELLUMS. Pending an agreement on hearings on the particular specific piece of legislation that would allow the subcommittee to probe this matter in depth, is that correct?

Mr. BEDELL. Not the $85,000 cap, but on the selection of architects and engineers.

Mr. DELLUMS. With that understanding then, the Chair would like to thank the gentleman for his presentation this morning, thank him for participating in these hearings, and we will be working with the gentleman in the future with respect to the latter item the gentleman raised.

Mr. BEDELL. Thank you.

Mr. DELLUMS. The Chair would like to call forward the following two witnesses: Ms. Norma Leftwich, Director of Small and Disadvantaged Business Utilization, Office of the Secretary of Defense; and Ruben Weatherholtz III, Associate Administrator for Procurement Assistance, Small Business Administration; and the Chair understands that both witnesses have someone accompanying them, and at the appropriate point the Chair would appreciate it if the witnesses would identify the persons accompanying them this morning.

I would like to begin with Ms. Leftwich. The chairman would like to note that we have received a full text of the gentlewoman's testimony and, without objection, it will appear at the appropriate point in the record, and the gentlewoman is recognized for such time as she may consume.

STATEMENT OF NORMA B. LEFTWICH, DIRECTOR, SMALL AND DISADVANTAGED BUSINESS UTILIZATION, OFFICE OF THE SECRETARY OF DEFENSE, DEPARTMENT OF DEFENSE, ACCOMPANIED BY CAPT. MICHAEL DALLAM, U.S. NAVY, DIRECTOR OF CONSTRUCTION OFFICE OF THE DEPUTY SECRETARY OF DEFENSE, INSTALLATION

Ms. LEFTWICH. Thank you, Mr. Chairman.

I am Norma Leftwich, the Department of Defense Director of Small and Disadvantaged Business Utilization. We welcome this opportunity to appear before your subcommittee to describe our small business and small disadvantaged business program as it applies to construction and architectural and engineering services. I have with me Capt. Michael M. Dallam, U.S. Navy, who is the Director of Construction in the Office of the Deputy Assistant Secretary of Defense, Installations.

Mr. DELLUMS. We welcome the gentleman to the subcommittee.

Ms. LEFTWICH. I would like to describe our organization throughout Department of Defense for the support of our small and disadvantaged businesses program. As required by Public Law 95–507, I am located in the Office of the Secretary of Defense, appointed to my position by the Secretary of Defense; reporting directly to the Deputy Secretary of Defense and working very closely with the Assistant Secretary of Defense for Acquisition and Logistics. Succinctly stated, the mission of my office is to establish the goals, objectives, policies, procedures, and initiatives necessary to enhance the opportunities for small business, small disadvantaged business, and women owned small business firms to obtain a fair share of our procurement requirements for goods and services. Some specific examples of what my office does are the following:

One. Establishing annual small business and small disadvantaged business goals.

Two. Develop small business policy for publication in the Federal acquisition regulation and the Department of Defense far supplement.

Three. Manage the Department of Defense support of Federal procurement conferences sponsored by Members of Congress.

Four. Conduct surveillance reviews of Department of Defense contracting activities' and major prime contractors' small and disadvantaged businesses programs.

Five. Review draft legislation as well as proposed new legislation.

Six. Expand the small business R&D program.

Seven. Meet with trade associations.

Eight. Develop program outreach publications.

Like myself, there is a Senior Director of Small and Disadvantaged Business at the levels of the Office of the Secretary of the Army, Navy, Air Force, and Director of the Defense Logistics Agency and other major defense agencies. Reinforcing these program executives at the field level, we have approximately 800 full and part-time small and disadvantaged businesses utilization specialists located at each and every contracting activity throughout the Department of Defense. These individuals have 26 specific duties to perform which are documented in our contracting regulations. One of their primary duties is to preview every procurement requirement valued over $5,000 which has not been set aside for small business to determine the reasons for non-set-aside and take any action required which will justify a set-aside.

PROCUREMENT SET-ASIDES

For any procurement to be set aside, the contracting officer must have a reassonable expectation that offers will be received from

two or more small business firms and the contract award can be made at a fair and reasonable price. For many years, Federal procurement regulations, as well as the armed services procurement regulations, required that offers be received from a sufficient number of small business firms. The term sufficient was imprecise and left wide interpretation of application to the approximate 40,000 procurement people in Department of Defense.

Our checks revealed that some contracting officers determined that the availability of 14 small business firms was not considered sufficient to set aside the procurement for exclusive participation by small business. In July 1979, we quantified the sufficiency of competition by substituting the term "two or more" for the term "sufficient." Since that time our set-asides have tripled.

Unique to the Department of Defense is our repetitive set-aside program that requires whenever we purchase any product or service successfully on a small business set-aside, that is the only way we will purchase it in the future. In essence, it is an automatic set-aside.

In the area of construction, our long-established policy is that any requirement valued up to $2 million is automatically set aside for small business.

For section 8(a) awards, prior to the beginning of each fiscal year, our construction activities examine their forthcoming requirements and make a determination which projects will be turned over to the Small Business Administration for award to a section 8(a) firm.

I think it would be best that I now describe the opportunity market that exists within the Department of Defense for small business and small disadvantaged business firms to participate in our requirements for goods and services. In fiscal year 1984, the Department awarded $124.9 billion in prime contracts of which $23.8 billion or 19.1 percent was awarded to small business firms. A significant accomplishment is the fact that of the $23.8 billion, $20.4 billion or 85.7 percent, was awarded on a competitive basis.

Our small business set-asides, which as I mentioned, are restricted only to small business firms and which we consider the underpinning of our entire small business program, increased to $12.5 billion, and for the second year in a row, have represented slightly more than half of our total prime contract awards to small business. To demonstrate the importance we attach to our small business set-aside program, we establish annual goals on all of the military departments, the DLA and other defense agencies. I might add that Department of Defense is the only Federal agency that establishes this set-aside goal.

In the area of small business subcontracting, our prime contractors made subcontract awards in the amount of $47.6 billion. Of this amount they awarded $18 billion to small and disadvantaged businesses firms.

MINORITY AWARD INCREASED

Our awards to minority firms have likewise shown significant increases, reaching a level of $3.5 billion, while awards to women-owned small business firms have risen to $719 million.

All of these levels are the highest attained in the history of Department of Defense's small and disadvantaged businesses program and establishes a challenge for us to exceed this year. As of the end of August this year, compared to the same period last fiscal year, we are running slightly ahead, which is a hopeful sign that we may be successful in improving over last year's performance. The enclosures provide additional award information.

What I have described is the universe. What I would like to do now is to give you an idea as to the Department of Defense construction and architect and engineering marketplace.

In fiscal year 1984, our construction activities placed $6.7 billion in awards of which $5 billion or 75.2 percent was awarded last year. I think it might be best to mention that approximately 97 percent of the construction firms are designated as small business firms in keeping with the Small Business Administration construction size standards of $17 million average annual sales over a 3-year period.

Our construction set-asides amounted to $3.954 billion, or 59.2 percent of all construction awards. Minority construction awards amounted to $713 million. This outstanding performance results from the Corps of Engineers, the Naval Facilities Engineering Command and Air Force construction activities making a determined effort to bring in as many small and disadvantaged businesses firms into our construction requirements process and the aggressive application of our program operating procedures.

I would now like to address the architect and engineering [A&E] aspect of our program which deals with the construction as opposed to that architect and engineering which deals with the engineering field. Prior to passage of Public Law 95-507, while our percentage of awards to small architect and engineering firms was relatively high, around 66 percent, set-asides were only 5.9 percent. This law clearly set forth that set-aside awards were authorized for architect and engineering requirements. The following shows what took place after this policy was implemented:

TOTAL ARCHITECTURAL AND ENGINEERING AWARDS

	Awards	Small business awards	Small business (percent)	Set-aside awards	Set-aside (percent)
Fiscal year:					
1979	$200.7	$132.5	66.0	$11.8	5.9
1980	194.2	137.6	70.9	40.4	20.8
1981	234.3	176.3	75.4	110.1	47.0
1982	313.8	241.5	77.1	182.3	58.1
1983	431.5	291.7	67.6	245.7	57.0
1984	413.1	306.2	74.1	223.6	54.1
1984	196.1	136.1	69.4	115.8	59.1
1985	233.7	161.3	69.0	67.6	28.9

Not only did the small business awards increase but the increase was dramatic for set-asides. This performance resulted in three pieces of legislation. The first was Public Law 98-115, the Department of Defense Military Construction Authorization Act of 1984,

which required the Department of Defense to conduct a comprehensive review of its architect and engineering procurement program in order to determine whether current policies and practices of the Department result in a reasonable distribution of architect and engineering contracts to firms of all sizes. The law also stated that the Secretary of Defense, after consultation with the Small Business Administration and representatives of the architect and engineering community, was to determine:

First. What is a reasonable share of awards to be made to small business concerns; and

Second. What is a reasonable threshold amount above which large architect and engineering firms should not be precluded from competition.

In order to accomplish these requirements, we consulted with large, medium and small sized architect and engineering firms and with representatives of the Small Business Administration. As might be expected, there were differing views, many at variance with each other, regarding Department of Defense's implementation of its set-aside program. The Secretary of Defense, in his report to Congress, stated that our review concluded the following:

First. Department of Defense's current implementation of set-asides in support of small business is statutorialy authorized and correctly implemented through the defense acquisition regulation.

Second. Department of Defense's implementation of the set-aside program has been supported by the courts and the GAO.

Third. Quality performance of our requirements is not jeopardized by our current procedures, nor is mobilization readiness impaired.

Fourth. The establishment of a reasonable threshold amount will not result, in our view, in reasonable share distribution. We believe that an appropriate size standard will accomplish that objective.

Based on our consultations, a reduced size standard is indicated for this industry.

The second piece of legislation that affects our architect and engineering program is the fiscal year 1984 Department of Defense Appropriation Act (Public Law 95-212) which established a ceiling on architect and engineering set-asides at $85,000. This legislation was not initiated nor supported by Department of Defense. While the level of small business architect and engineering awards remained relatively constant for the third quarter this fiscal year compared with the same period last year—69.4 percent versus 69 percent—small business architect and engineering set-asides have fallen significantly from 59.1 to 28.9 percent.

The third piece of legislation is Public Law 98-407, Department of Defense fiscal year 1985 Military Construction Act which permits the Secretary of Defense "to revise that amount ($85,000) in order to ensure that small business concerns receive a reasonable share of contracts." This law also excluded section 8(a) awards from the ceiling restriction.

At this point, we have not made a determination as to what level the cap should be adjusted. We will endeavor to make this determination as soon as we have received all of the fiscal year 1985 award data. However, another factor must be included in this equation and this is the new architect and engineering size standard which

was published for comment in the Federal Register last week. It is contemplated that the present small business size standards will be reduced from $7.5 million average annual sales over a 3-year period to $1.5 million. This will result in approximately 2,000 firms losing their small business size status and therefore lower the overall small business share of the architect and engineering awards.

We have always believed that the problem in this industry is the level of the size standard and that it should be lowered. However, it is difficult to determine with preciseness at what level it should be set. Consultation between the Office of Federal Procurement Policy, the Small Business Administration, and ourselves indicated that the first try at the right number should be $1.5 million. I think we will have to operate at least 2 years at this level before meaningful results can be obtained.

Mr. Chairman, this concludes my statement. I will be happy to answer any questions you or members of your committee may have.

[The following information was received for the record:]

PRIME CONTRACT AWARDS
(MILLIONS)

(IN MILLIONS)	FY 78	FY 79	FY 80	FY 81	FY 82	FY 83	FY 84
AWARDS TO ALL FIRMS	54,359	58,174	66,704	87,195	102,463	121,096	124,912
AWARDS TO SMALL FIRMS	10,735	12,170	13,588	17,770	20,143	22,769	23,816
% TO SMALL FIRMS	19.7%	20.8%	20.4%	20.4%	19.7%	18.8%	19.1%
SMALL BUSINESS SET-ASIDE AWARDS	3,434	4,105	4,787	8,322	10,041	11,711	12,448
% SET-ASIDES TO SMALL BUSINESS	6.3%	7.1%	7.2%	9.5%	9.8%	9.7%	10.0%

2870-5

DEFENSE SMALL BUSINESS SUBCONTRACTING PROGRAM

	FY 77	FY 78	FY 79	FY 80	FY 81	FY 82	FY 83	FY 84
1. NO. CONTRACTORS REPORTING	737	810	833	1,023	1,133	1,170	1,174	1,208
2. VALUE SUBCONTRACTS	$15,038	$17,482	$21,244	$25,499	$33,937	$35,329	$39,796	$47,582
A. LG BUSINESS	9,175	10,367	12,174	14,675	20,931	21,949	24,199	29,625
B. SM BUSINESS	5,863	7,115	9,070	10,824	13,006	13,380	15,598	17,957
C. SMALL DISAD. BUSINESS	153	251	344	452	554	578	652	812
3. % SUBCONTRACTED								
A. LG BUSINESS	61.0%	59.2%	57.3%	57.6%	61.7%	62.1%	60.8%	62.3%
B. SM BUSINESS	39.0%	40.7%	42.7%	42.4%	38.3%	37.9%	39.2%	37.7%
C. SMALL DISAD. BUSINESS	1.0%	1.4%	1.6%	1.8%	1.6%	1.6%	1.6%	1.7%

DOLLARS IN MILLIONS

55-611 O - 86 - 2

FY 1984 SMALL DISADVANTAGED BUSINESS PROGRAMS (OCT 1983 THRU SEPT 1984)

DEPARTMENT/ AGENCY	8(A) PERFORMANCE	PRIME PERFORMANCE	SUBCONTRACTING PERFORMANCE	TOTAL	DEPARTMENT/ AGENCY GOAL	PERCENTAGE ATTAINMENT
ARMY	716.0	425.2	52.2	1,193.4	1,070.5	111.5
NAVY	324.2	259.5	156.1	739.8	663.9	111.4
AIR FORCE	296.0	152.3	257.0	705.3	634.0	111.2
DLA	354.5	165.0	347.1	866.6	860.0	100.8
OTHER	8.5	8.3	—	16.8	26.8	62.7
TOTAL DOD	1,699.2	1,010.3	812.4	3,521.9	3,255.2	108.2
PROGRAM GOAL	1,386.7	1,170.4	698.1	3,255.2		
PERCENTAGE ATTAINMENT	122.5	86.3	116.4	108.2		

1260-5

WOMEN-OWNED SMALL BUSINESS AWARDS
FISCAL YEAR COMPARATIVE PERFORMANCE

		TOTAL AWARDS	WOSB AWARD	%	GOAL	% GOAL ATTAINMENT
ARMY	FY 1983	$ 26,434	205.7	0.8	163	126.2
	FY 1984	29,595	262.4	0.9	215	122.0
NAVY	FY 1983	$ 43,880	103.2	0.2	74	139.5
	FY 1984	39,948	136.7	0.3	107	127.8
AIR FORCE	FY 1983	$ 35,649	119.7	0.3	86	139.2
	FY 1984	40,507	166.9	0.4	125	133.5
DLA	FY 1983	$ 12,150	87.7	0.7	90	97.4
	FY 1984	11,673	134.2	1.1	93	144.3
DOD*	FY 1983	$121,096	527.3	0.4	420	125.5
	FY 1984	124,912	718.7	0.6	550	130.7

$ = MILLIONS
* DOD TOTALS INCLUDE AWARDS BY OTHER DEFENSE AGENCIES

946.5

PRIME CONTRACTS FOR CONSTRUCTION[1]

	FY 1976	FY 1977	FY 1978	FY 1979	FY 1980	FY 1981	FY 1982	FY 1983	FY 1984
TOTAL AWARDS	$3,426	$3,757	$3,754	$3,998	$4,328	$4,945	$5,323	$5,676	$6,671
SB AWARDS	$1,727	$1,982	$2,123	$2,579	$2,591	$3,124	$3,516	$3,946	$5,017
% SB AWARDS	50.4%	52.7%	56.5%	64.5%	59.9%	63.2%	66.1%	69.5%	75.2%
SDB AWARDS[2]	$7	$28	$55	$189	$255	$427	$461	$643	$713
% SDB AWARDS	0.2%	0.7%	1.5%	4.7%	5.9%	8.6%	8.7%	11.3%	10.7%
SB SA AWARDS	$992	$1,303	$1,506	$1,767	$1,761	$2,241	$2,743	$3,205	$3,954
% SB SA AWARDS	31.2%	34.7%	40.1%	44.2%	40.7%	45.3%	51.5%	56.5%	59.3%

[1]DOLLARS IN MILLIONS – AWARDS OF $10,000 OR MORE THROUGH FY 1982 – $25,000 THEREAFTER
[2]INCLUDES PRIME CONTRACT AND SECTION 8(a) AWARDS

2870-5

DEPARTMENT OF DEFENSE
PRIME CONTRACT AWARDS OVER $25,000
FOR CONSTRUCTION

FISCAL YEAR 1984

DEPT	TOTAL ACTN	TOTAL $(000)	LARGE ACTN	LARGE $(000)	SMALL ACTN	SMALL $(000)	PCT OF SMALL ACTN	PCT OF SMALL AMT	SET-ASIDES ACTN	SET-ASIDES $(000)	SMALL DISADVANTAGED 8A ACTN	SMALL DISADVANTAGED 8A $(000)	SMALL DISADVANTAGED NON-8A ACTN	SMALL DISADVANTAGED NON-8A $(000)
ARMY	8,301	2,600,884	832	493,553	7,469	2,107,331	90.0	81.0	6,330	1,693,494	457	188,648	627	148,782
NAVY	6,219	1,766,390	460	294,512	5,759	1,471,878	92.6	83.3	4,634	1,127,595	143	38,348	672	132,143
A F	3,908	973,348	146	170,248	3,762	803,100	96.3	82.5	3,421	722,143	217	58,350	288	46,411
DLA	61	6,509	2	95	59	6,414	96.7	98.5	37	4,085	19	2,181	5	388
CE	2,699	1,323,486	620	695,392	2,079	628,094	77.0	47.5	1,582	405,380	215	73,689	107	24,335
DOD	21,188	6,670,617	2,060	1,653,800	19,128	5,016,817	90.3	75.2	16,004	3,952,697	1,051	361,216	1,697	352,059

Mr. DELLUMS. Thank you for your opening remarks.

The Chair would like to recognize Mr. Weatherholtz for his testimony. Then we would question both of you as a panel. We would like to note that we are in receipt of the full text of your testimony, and without objection, the full text of the gentleman's statement will appear at the appropriate point in the record, and you may proceed in any fashion you choose.

STATEMENT OF RUBEN E. WEATHERHOLTZ III, ASSOCIATE ADMINISTRATOR FOR PROCUREMENT ASSISTANCE, SMALL BUSINESS ADMINISTRATION, ACCOMPANIED BY WILFREDO J. GONZALEZ, ASSOCIATE ADMINISTRATOR FOR MINORITY SMALL BUSINESS

Mr. WEATHERHOLTZ. Good morning, Mr. Chairman, and members of the subcommittee. Would you like for me to summarize my statement?

Mr. DELLUMS. The full statement will appear at the appropriate point in the record, and if the gentleman sees fit to summarize it at this point, the Chair and members of the committee would look upon that with great favor.

Mr. WEATHERHOLTZ. Then I will do so, sir.

Mr. DELLUMS. Thank you very much.

Mr. WEATHERHOLTZ. I am Ruben E. Weatherholtz, Associate Administrator for Procurement Assistance at the Small Business Administration. With me is Mr. Wilfredo J. Gonzalez, who is Associate Administrator for Minority Small Business and Capital Ownership Development. I appreciate the opportunity to testify today.

It is my understanding that your subcommittee is concerned with the involvement of small and disadvantaged businesses in military construction by examining the current law, regulations, and practices relating to small business in construction, both contractors and architect and engineering firms.

The construction industry may look to the Federal market as a significant opportunity. In fiscal year 1984 we are advised that the Department of Defense awarded contracts totaling $6.7 billion for construction. The small business portion of that was $5 billion, or about 75 percent. The value going to small disadvantaged firms was approximately $713 million. In the case of architect and engineering services awards there were about $413 million awarded in fiscal year 1984, of which $306 million went to small business, or 74 percent. In the same year, small disadvantaged businesses received approximately $37 million, or about 9 percent of the total.

We recommend that prospective contractors use an orientation period before entering the Federal market wholeheartedly. The first step is to acquire copies of the "U.S. Purchasing and Sales Directory," published by SBA and "Selling to the Military," published by Department of Defense. The business person will then wish to obtain subscriptions to the Defense Acquisition Regulation, which is essential for an understanding of how Department of Defense contracts are awarded and administered. Finally, he or she should subscribe to the Commerce Business Daily, which is the regular publication listing all the Government's intended acquisitions of goods and services.

Having obtained the material I mentioned, the small and disadvantaged construction firm is ready to submit form 129, the standard bidders mailing list application form, to each element of the Department of Defense to which the business person wishes to bid.

Once the solicitation is in the hands of the construction firm, the business offers its best calculated bid and the most advantageous offer is accepted by the Government.

In the case of architect and engineering services, the selection process is governed by the Brooks Act. Firms submit standard form 254 "architect-engineer and related services questionnaire," which indicates their interests and qualifications. Here again, the intent to award a contract will be publicly announced.

In the case of architect and engineering services an evaluation board will review firms' qualifications in terms of professional qualifications, specialized experience and technical competence, capacity to complete work on time, past performance, knowledge of local area of the project, and acceptability under other appropriate evaluation criteria. From this evaluation, the board will develop a preselection list of qualified firms.

The Government will then begin negotiations with the first selected firm to achieve a contract at a fair and reasonable price. If negotiations are unsuccessful, then negotiations are begun with the next firm on the list.

SBA offers its assistance to firms in these industries in several ways. The best known is the small business set-aside. Award of contracts may be restricted to small business firms only. The regulations provide that this restriction of offerors will be applied when the contracting officer reasonably believes that two or more responsible small business offers will be submitted on a solicitation.

In the case of architect and engineering services, small business set-asides were specifically authorized by Public Law 95–507.

SECTION 8(a) PROGRAM

You should also be aware of our 8(a) program, specifically created for the socially and economically disadvantaged. Under this program, named for section 8(a) of the Small Business Act, Department of Defense and other departments contract directly with SBA for delivery of a product or service, including construction. SBA then subcontracts performance to a firm in this program. This permits the award of sole source contracts, on a negotiated basis, to selected firms.

Contracts are selected for award under 8(a) by agreement between SBA and the contracting agency. The process may be initiated by either agency. The basic criterion is that a contract offers the opportunity for profitable experience for a member of the 8(a) program and the Government. If a fair and reasonable price cannot be negotiated after SBA selects a prospective contractor, the requirement will be returned to the buying agency.

This concludes a synopsis of my prepared remarks, Mr. Chairman. I would be glad to respond to any questions you or your subcommittee may have.

PREPARED STATEMENT OF RUBEN E. WEATHERHOLTZ III

Mr. Chairman and members of the subcommittee: I am Ruben E. Weatherholtz, Associate Administrator for Procurement Assistance at the Small Business Administration; with me is Mr. Wilfredo J. Gonzalez who is Associate Administrator for Minority Small Business and Capital Ownership Development. I appreciate the opportunity to testify today. The subject involving small and disadvantaged business in military construction is especially close to me. As a former head of a small construction firm I have bid on and completed Federal contracts. I am pleased now to be in a position to encourage and assist small firms to participate in the Federal market.

It is my understanding that your subcommittee is concerned with the involvement of small and disadvantaged businesses in military construction by examining the current law, regulations and practices relating to small business in construction, both contractors and architect-engineering firms. Since I also understand you wish the record to be helpful in assisting firms who are unsure of how to be considered for such contracts, I will attempt to comment in more detail than would ordinarily be the case. I have also prepared some flow charts on the process of obtaining contracts. Copies of the charts are attached to my statement.

As background to our discussion today I would like to summarize our organization with SBA. As Associate Administrator I report to our Administrator, James C. Sanders. The Office of Procurement Assistance, which I head, is composed of five directorates containing seven programs.

The Office of Procurement Policy and Liaison is concerned with review of legislation and, as a member of the Civilian Agency Acquisition Council, influencing, for the benefit of the small business community, the Federal acquisition regulations. This office, which maintains liaison with the principal procuring agencies of the executive branch, is also charged with coordination of the annual establishment of goals for participation in the Federal market by small and small disadvantaged. This negotiation of annual goals is a requirement established by Public Law 95-507. This office is a central office function only, but the remaining elements have corresponding field staff.

Our set-aside and breakout programs are handled by the Office of Prime Contracts Assistance. It is here that policy is established for the 55 procurement center representatives who screen purchase requests for 250 installations, instituting small business set-asides where possible. Other, related, duties complement that basic responsibility. Also, this unit establishes guidance for the SBA breakout procurement center representatives. Started as an experiment in fiscal year 1980 and since established by Public Law 98-577, this program will soon have 34 teams of 3 persons each, working on introducing competition into sole-source or limited source procurements.

The Office of Subcontracts Assistance also contains two programs. The first is the guidance of the Subcontracting Program created by Public Law 95-507. This program requires every Government contract over $1,000,000 for construction ($500,000 for other contracts) to contain a small and small disadvantaged business subcontracting plan, unless the contractor itself is a small business. Our field personnel review proposed plans and work directly with prime contractors to enhance the opportunities for small business in this area. The same office also manages the Procurement Automated Source System (PASS). PASS is a computerized listing of over 140,000 small firms interested in Government prime or subcontracts. More than 250 installations and prime contractors use their terminals to search for small businesses, using any one of several search methods: key word description; Zip Code; etc.

Our next major function, under the Office of Industrial Assistance, is the certificate of competency program. Government contracting officers may reject low bids if they determine the offeror to be not responsible; that is to say, lacking in credit, capacity, tenacity, integrity, or perseverance. If the firm is a small business, however, the case must be referred to SBA. We have the obligation under the Small Business Act to review independently the capabilities of the firm performing the contract in question. After that review, our finding that the firm is competent is binding on the contracting officer. Such findings resulted in savings to the Government of $22 million in fiscal year 1984 alone.

The final program to be mentioned is under the Office of Natural Resource Sales Assistance. This office is concerned with SBA's responsibility for assuring a fair proportion of Federal sales are to small business. A staff of only seven nationwide concentrates primarily on small business purchases of Federal timber. They are also involved, however, in mineral leasing and disposal of Federal royalty oil.

All of these functions are directly concerned with assisting the small business community in contractual relationships with the Federal Government.

The construction industry may look to the Federal market as a significant opportunity. In fiscal year 1984, we are advised that the Defense Department awarded contracts totaling $6.7 billion for construction. The small business portion of that was $5 billion, or about 75 percent. The value going to small disadvantaged firms was approximately $713 million. In the case of architect-engineering services awards there were about $413 million awarded in fiscal year 1984, of which $306 million went to small business, or 74 percent. In the same year, small disadvantaged businesses received approximately $37 million, or about 9 percent of the total.

In the case of small business eligibility, SBA establishes small business size standards under guidelines set by the Small Business Act. The current standard for general construction is $17 million gross receipts, averaged for 3 years. The standard is $12 million for special trades. For architect-engineering services the standard is $7.5 million. The agency has just published a proposed rule for comment, which could reduce the architect-engineering standard to $1.5 million.

Any small or disadvantaged business interested in doing business with the Government is well advised to undertake a learning process before proceeding too far into the system. Federal procurement is not the impossible, tortuous puzzle as sometimes described. It is, however, different from business in the private sector. For that reason we recommend that prospective contractors use an orientation period before entering the Federal market whole-heartedly. The newcomer needs to do several things. The first step is to acquire copies of the "U.S. Purchasing and Sales Directory," published by SBA, and "Selling to the Military," published by DOD. Those two items will serve as an introduction to the process and point the way toward more detailed understanding of the business. The business person will then wish to obtain subscriptions to the Defense Acquisition Regulation which is essential for an understanding of how DOD contracts are awarded and administered.

Finally, he or she should subscribe to the Commerce Business Daily which is the regular publication listing all the Government's intended acquisitions of goods and services. This latter publication provides a brief description of the intended contract and informs the public where more detail, specifically a copy of the solicitation of offers, may be obtained. All the items I have mentioned are available from the Superintendent of Documents, Washington, DC 20402. Additionally, both networking with other contractors with more experience and reviewing commercially available reports on planned construction are useful.

Having obtained the material I mentioned and, I hope, having begun a study of Federal procurement methods, the small or disadvantaged construction firm is ready to submit form 129, the standard bidders mailing list application form, to each element of the Defense Department to which the business person wishes to bid. Usually these will be the closest geographically but some small, specialized firms are wide-ranging in their bidding. It is unfortunate that separate forms must be filed for each installation. We have hopes that someday a single registration will be possible, but that day is still in the future.

Thereafter, when projects are announced the small firm will be on the list to obtain a copy of the solicitation. Because some installations have numerous firms on these lists the usual practice is to rotate the firms on these lists. Not all firms are solicited every time. Therefore, it behooves the interested business person to screen the Commerce Business Daily or to visit installations' bid rooms regularly and to request specifically any solicitations of interest.

Once the solicitation is in the hands of a construction firm, bearing in mind the need to comply with all provisions of the solicitation, the process is straightforward. The business offers its best calculated bid and the most advantageous offer is accepted by the Government.

In the case of architect-engineering the selection process is governed by the Brooks Act. Firms submit standard form 254 "Architect-Engineer and Related Services Questionnaire" which indicates their interests and qualifications. When requested by the contracting officer, an additional standard form 255 "Architect-Engineer and Related Services Questionnaire for Specific Project" is required to show qualifications for a specific project. Here, again, the intent to award a contract will be published in the Commerce Business Daily when the value is estimated at more than $10,000. In the case of architect-engineering services an evaluation board will review firms' qualifications in terms of professional qualifications, specialized experience and technical competence, capacity to complete work on time, past performance, knowledge of local area of the project, and acceptability under other appropriate evaluation criteria. From this evaluation the board will develop a pre-selection list of qualified firms. Using the Government estimate, the Government will then

begin negotiations with the first selected firm to achieve a contract at a fair and reasonable price. If negotiations are unsuccessful then negotiations are begun with the next firm on the list, until a contract is awarded.

SBA offers its assistance to firms in these industries in several ways. The best known is the small business set-aside. Under section 15 of the Small Business Act, as implemented by the Federal Acquisition Regulation, award of contracts may be restricted to small business firms only. The regulations provide that this restriction of offerors will be applied when the contracting officer reasonably believes that two or more responsible small business offers will be submitted on a solicitation. The regulations now provide specifically for "two or more" because of the experience of SBA and the buying agencies under less precise language. Previous regulations called for set-asides only when there was expectation of small business offers in "sufficient number" to assure a "fair and reasonable" price. Interpretations of this varied significantly and SBA often found set-asides being declined in the face of significant levels of small business interest. The Defense Department was the first to establish a definite standard to be applied in calling for "two or more." Since then the provision has been incorporated into the Federal acquisition regulation governing procurement by all buying agencies. We believe that this standard is important for the continued encouragement of small business participation in the Federal market.

Small business set-asides mean that firms compete against each other, not against the giants of their industry. The result is increased imvolvement of small firms in Federal procurement since each is competing against other firms of similar size, and also because they do not have to confront directly the firms who may regularly subcontract work to them. SBA personnel, procurement center representatives, regularly review proposed contracts and institute requests for set-asides.

In the case of architect-engineer services, small business set-asides were specifically authorized by Public Law 95-507. Since implementation of that law some controversy has arisen over set-asides in this industry. DOD has been legislatively restricted to a cap of $85,000 on architect-engineering set-asides, and has also been required to conduct a study directed toward policies which would result in reasonable distributed of architect-engineering contracts. At the same time, SBA has been reviewing the current size standard. After completing our review, and conferring with our colleagues at DOD and the Office of Federal Procurement Policy, we have proposed a new small business size standard of $1.5 million gross average annual receipts over 3 years, for the construction related architect-engineering industry.

We also deal with construction firms under our certificate of competency program. Ordinarily, a contracting officer may decline to award a contract to the low bidder if the offeror is determined to be "Not responsible;" that is to say, lacking in credit, capacity, tenacity, integrity, or perseverance. If such a firm is a small business, the case must be referred to SBA for a second review. If SBA, after consideration, certifies the firm as capable of performing the contract in question then the contract must then be awarded to the small firm.

You should also be aware of our "8(a)" program specifically created for the socially and economically disadvantaged. Under this program, named for section 8(a) of the Small Business Act, DOD and other departments contract directly with SBA for delivery of a product or service, including construction. SBA then subcontracts performance to a firm in this program. This permits the award of sole-source contracts, on a negotiated basis, to selected firms. The firms, which receive other assistance in the financial and management areas as necessary, receive enhanced cash flow, and expanded experience in both the preparation for bidding and contract performance. Exhibit A is a presentation of our experience with 8(a) contracts in the fields of construction and architect/engineering services.

Contracts are selected for award under 8(a) by agreement between SBA and the contracting agency. The process may be initiated by either agency. The basis criterion is that a contract offers the opportunity for profitable experience for a member of the 8(a) program and the Government. If a fair and reasonable price can not be negotiated after SBA selects a prospective contractor, the requirement will be returned to the buying agency.

Before closing, I should summarize the eligibility criteria for SBA programs. The standards for status as "socially and economically disadvantaged" are established in Public Law 95-507, which laid down legislative guidelines for the 8(a) program. Essentially the provision is for those who have suffered such social and economic discrimination, because of membership in a group for which they had no control, that their ability to compete in the free enterprise system has been impaired. Application for the 8(a) program must be made to SBA. Acceptance is based not only on

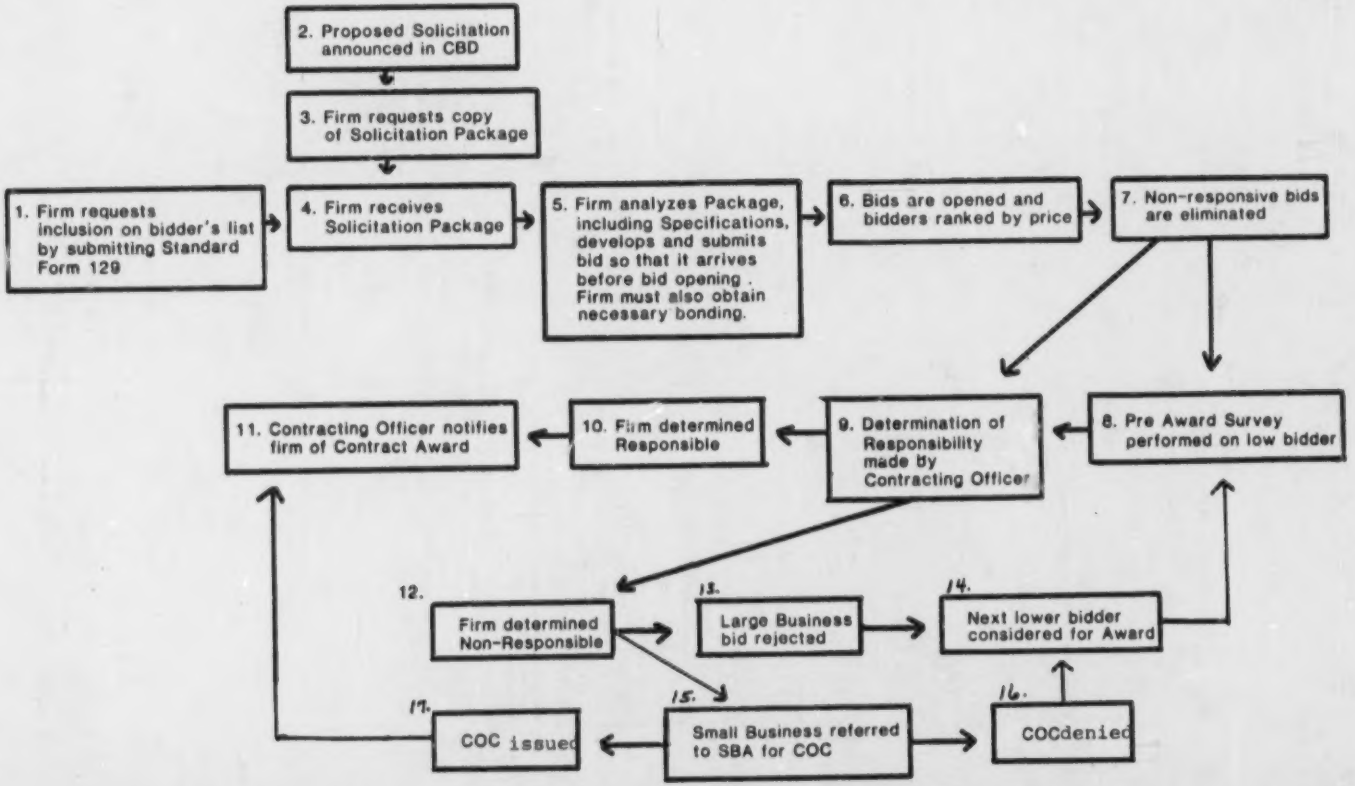
eligibility but on an appraisal of whether SBA will be able to assist the firm, both with contracts and in terms of financial or management needs.

This concludes my prepared remarks, Mr. Chairman. I would be glad to respond to any questions you or members of your subcommittee may have.

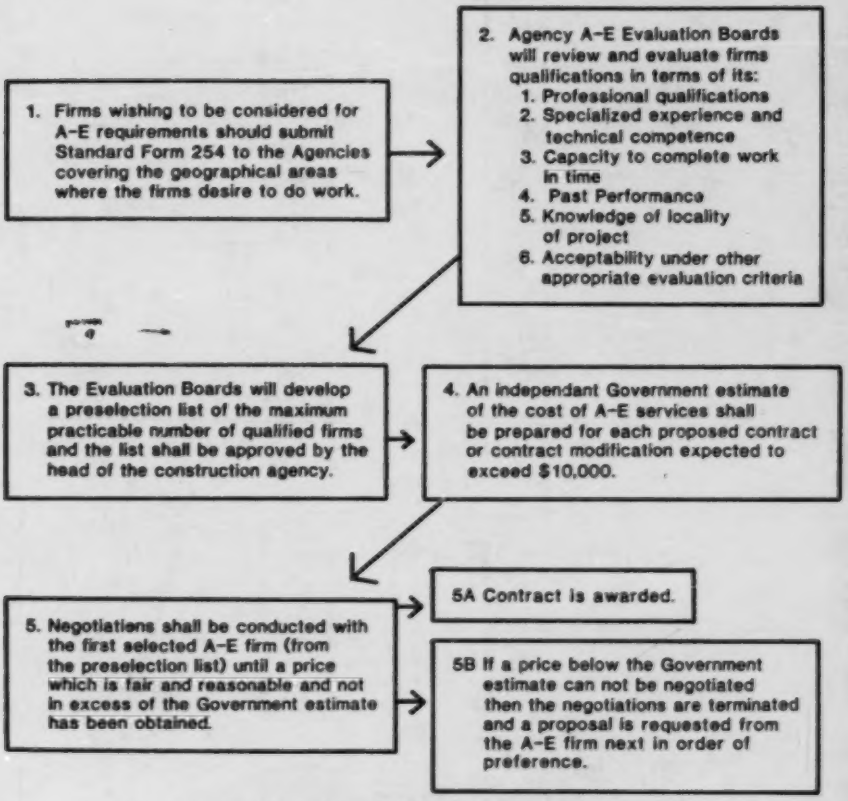
EXHIBIT A.—(a) CONTRACTS

	Construction		Architect and engineering	
	Number	Amount	Number	Amount
Fiscal year:				
1971	27	$1,089		
1976	218	30,000	3	$1,339
1981	1,025	305,630	52	31,672
1982	932	241,803	53	20,717
1983	1,002	338,223	58	22,202
1984	1,082	448,277	105	56,591

Most Construction is Procured via Sealed Bidding


1. Firm requests inclusion on bidder's list by submitting Standard Form 129
2. Proposed Solicitation announced in CBD
3. Firm requests copy of Solicitation Package
4. Firm receives Solicitation Package
5. Firm analyzes Package, including Specifications, develops and submits bid so that it arrives before bid opening. Firm must also obtain necessary bonding.
6. Bids are opened and bidders ranked by price
7. Non-responsive bids are eliminated
8. Pre Award Survey performed on low bidder
9. Determination of Responsibility made by Contracting Officer
10. Firm determined Responsible
11. Contracting Officer notifies firm of Contract Award
12. Firm determined Non-Responsible
13. Large Business bid rejected
14. Next lower bidder considered for Award
15. Small Business referred to SBA for COC
16. COC denied
17. COC issued

A & E Services are Procured via Negotiation


1. Firms wishing to be considered for A-E requirements should submit Standard Form 254 to the Agencies covering the geographical areas where the firms desire to do work.
2. Agency A-E Evaluation Boards will review and evaluate firms qualifications in terms of its:
1. Professional qualifications
2. Specialized experience and technical competence
3. Capacity to complete work in time
4. Past Performance
5. Knowledge of locality of project
6. Acceptability under other appropriate evaluation criteria
3. The Evaluation Boards will develop a preselection list of the maximum practicable number of qualified firms and the list shall be approved by the head of the construction agency.
4. An independant Government estimate of the cost of A-E services shall be prepared for each proposed contract or contract modification expected to exceed $10,000.
5. Negotiations shall be conducted with the first selected A-E firm (from the preselection list) until a price which is fair and reasonable and not in excess of the Government estimate has been obtained.
5A Contract is awarded.
5B If a price below the Government estimate can not be negotiated then the negotiations are terminated and a proposal is requested from the A-E firm next in order of preference.

Notes 1. The volume of work previously awarded to an A-E firm will be considered with the object of effecting equitable distribution among qualified firms including small and small disadvantaged business firms.

2. A performance evaluation report will be prepared by the construction agency for each contract over $10,000. This report will be distributed to other construction agencies.

Mr. DELLUMS. I thank the gentleman for his opening statement and the Chair would recognize the gentleman from Virginia, Mr. Sisisky for such time as he may consume.

Mr. SISISKY. I am really startled by this report. How can you argue with a 75 percent small business in construction, if I read this correctly?

I do have one area that bothers me and I don't know whether you have looked at it or not, and that is military housing. As I understand it, most of the construction there is—90 percent, I think I heard in the testimony—is turnkey construction. Do you find that an impediment to small business bidding on that type of construction?

TURNKEY CONSTRUCTION

Captain DALLAM. As you mentioned, most family housing projects are going turnkey and in that process, the designer and the contractor is a joint venture or single firm doing the work. There have been indications from some contractors in the field, small contractors, that felt this was precluding them from competing. At the same time, we feel that even though a larger firm may have capacity to bid on these jobs, most of the work is done by small firms through subcontracting. So the amount of work that is going to small contractors is probably not significantly different.

Mr. WEATHERHOLTZ. Also, under the turnkey—wouldn't those require a subcontracting plan? According to Public Law 95-507, any Government contract by a large business that exceeds $1 million in construction or $500,000 for other types of contracts, would require a subcontracting plan.

Mr. SISISKY. Most contractors would have subcontractors, I assume. I am talking about the general contractors. It would seem to me that only those—I may be wrong—but only those large firms that have architects and engineers on the staff would even bid, because the gamble out there is too large to go out and hire one. I am just assuming that, I don't know whether it is true or not. I don't know whether you have looked at that problem. I bring it up occasionally here. That seems like an impediment against small business.

We seem to do things backward. Take the large projects like a hospital, which we get $3 and $400 million military hospitals here, and that is open bid for architects. That is an absolute to a degree science, you know. It is not everybody that can bid on that and yet in housing, we turn it around, and we say that should be a turnkey type of thing. So I just bring that up. It is something that perhaps you can look at.

Captain, were you going to testify?

Captain DALLAM. I was going to make a further comment with respect to the housing situation. Although most of the housing projects do go turnkey, the size of these projects—normally several hundred or more—is such that the small business participation would probably not be limited even if turnkey was not used. [*Committee note.*—Witness misspoke and later submitted the following information:]

Most of the family housing projects do in fact go turnkey and the proposal preparation costs probably do have some impact on the number of small business firms that wish to pursue these projects. But since these housing projects are frequently for several hundred units, it is more the size of the projects, rather than the contracting method, that has an influence on the ability of small firms to successfully pursue this work as the prime or general contractor.

Mr. SISISKY. That is not what I heard in this committee and I could be wrong, I would ask the staff if they would look up the testimony that 90 percent of the housing was turnkey. But that was beside the point.

You mentioned architectural and engineering, do you see any advantages—I would just ask all three of you—to a sliding scale on architectural and engineering? Is there any advantage? I am just groping for something.

Captain DALLAM. The sliding scale may have some advantages on the very small design jobs where the amount of overhead is almost the same as it would be on a much larger job In those cases, it may be very difficult to keep the designer's cost within the 6 percent. There is also sometimes a highly technical, very complex job, such as in a research and development area, staying within the 6 percent is sometimes a constraint. As a general rule, however, the 6 percent is adequate.

Mr. SISISKY. I agree with you. One of the complaints that I had people calling me about Mr. Bedell's bill is that there are some construction jobs that could be $100,000 or $200,000. With all the paperwork they have to do, they can't do it for $6,000, or $12,000, whatever the amount would be. So you do say there could be some variances in the sliding scale, some advantages?

Captain DALLAM. Yes sir.

Mr. SISISKY. Thank you.

Mr. DELLUMS. Time of the gentleman has expired.

The Chair would recognize the gentleman from Mississippi, Mr. Montgomery, for such time as he may consume.

Mr. MONTGOMERY. Thank you very much, Mr. Chairman.

Ms. Leftwich, from your testimony, I assume you are saying that the set-aside or the small business program minority groups participating is working fairly well in the Department of Defense, is that what you are saying?

Ms. LEFTWICH. The program works well, yes.

Mr. MONTGOMERY. Works well. I think one reason for the hearing that in this House bill it calls for a 10-percent set-aside.

Mr. DELLUMS. That is correct.

Mr. MONTGOMERY. And that is one reason for the hearing. But you are saying you think that small business and that the minority contractors are protected in what we have now?

Ms. LEFTWICH. Yes, that is our feeling, that the program is a premier performer among all of the department programs for small and minority business, with an extraordinarily high level of participation, much higher than any other, with the possible exception of the textile industry, in Department of Defense that I know of.

Mr. MONTGOMERY. Thank you.

The Small Business Administration representative?

Mr. GONZALEZ. Well, just to add to that, the portfolio for the 8(a) program indicates that we have 926 construction companies, which

is approximately 35 percent of our portfolio, and that receives a little under 30 percent of the total 8(a) dollars available.

Mr. MONTGOMERY. Mr. Chairman, I know in the 8(a) program in highway construction, there are some problems in that there are not enough contractors out there of minority groups, even small business, and sometimes the primary contractor on these highway construction jobs gets involved in it, he finances the payroll for, in fact puts some of them in the business and some of these major contractors are getting into trouble, do we have that problem, do we see that in military construction? If we pass legislation that says 10 percent of the military construction would have to go to a small business or minority contractor, would that develop the problem? I note the gentleman from Small Business Administration?

Mr. WEATHERHOLTZ. Yes sir. I believe that it could cause a problem. Coming up with the total number of qualified minority contractors to meet that legislation might be a problem.

Mr. DELLUMS. Would you yield?

If the Chair understands the question from the gentleman from Mississippi, he is saying that in some instances large firms have used minority firms as front firms in order to gain the contract, is that what the gentleman is asking?

Mr. MONTGOMERY. Yes. I might not be exactly clear on that. I don't specialize in this area, as the gentleman knows. I probably could answer it on the National Guard and Reserve. But they bid a job say in Mississippi and they bid it for $10 million—well I believe under the law—of highway construction, that 10 percent of that, or some percent has to go to minority contractors. They can't find a minority contractor, not only in Mississippi but other parts of the country, so the primary contractor goes out and puts somebody in business and then eventually he gets in trouble, and she gets into trouble.

That was likely what I am trying to find out. If we put a 10 percent, that it has to be all military construction, is it going to create any problems down the line? I am really seeking information.

Mr. DELLUMS. You understand the question?

Mr. WEATHERHOLTZ. I apologize, I thought he was referring to the 10-percent total increase in dollars to——

Mr. DELLUMS. As the Chair understands the question of the gentleman from Mississippi, he is saying a 10-percent requirement on highway construction, that it has been his experience in his State and perhaps in other States, where they are attempting to meet that 10-percent set-aside, some of the large corporations have gotten into difficulty by virtue of the fact they have set up minority front firms in order to obtain these contracts. What the Chair understands the gentleman from Mississippi is asking you is whether or not a 10-percent set-aside of all military construction programs, if that requirement were written into the authorization bill, does it, in your estimation, create the environment for this kind of criminal activity? That it is the direct question the gentleman is asking, is that not correct?

Mr. MONTGOMERY. The gentleman said it better than I.

Mr. WEATHERHOLTZ. I will defer to Mr. Gonzalez, who would have a direct answer on that.

Mr. MONTGOMERY. Mr. Gonzalez, you were very brief. I wish you would tell us a little more than a half a sentence.

Mr. GONZALEZ. Well, I think what is being asked is suggestive under the conditions of the program as we see it, we don't see that as a problem. We can all speculate as to what may happen, but I think as far as the Small Business Administration is concerned, in terms of identifying through the qualifications criteria, whether an organization is a front or not, I think we can smoke people out pretty well.

Ms. LEFTWICH. If I may, I think there are two issues. Whether it creates an environment for criminal activity is one question, but whether we would actually have a problem meeting a 10-percent requirement in military construction, I think that we absolutely would. Our statistics indicate that minority businesses right now are participating barely at the level of 2.2 percent of small business prime contract awards. So everything that we would see would indicate that we are not comfortable, that there is the capacity out there to absorb 10 percent of our military construction requirements.

Mr. MONTGOMERY. What you are saying to me that you don't think they could absorb, that these handicapped or minorities or small business could do the job, I mean could have enough of them to bid?

Ms. LEFTWICH. That would be my concern, yes.

Mr. SISISKY. Would you yield?

Mr. MONTGOMERY. Yes.

Mr. SISISKY. Two years ago, on the 10-percent set-aside, I was advised that Virginia may ask for a waiver and I talked to our Governor and I said you know, North Carolina has said they can do it, why shouldn't we do it, and as a matter of fact—I may be corrected on that figure—but I think last year we had either 14- or 19-percent set-aside and everybody said they couldn't do it? Obviously, you have to go out and be persuasive and do some things that are—I am not saying it can happen overnight, and I am not advocating any number, I am saying it can be done.

Ms. LEFTWICH. I understand.

Mr. SISISKY. We proved it in Virginia that it can be done.

Mr. MONTGOMERY. You are talking about highways?

Mr. SISISKY. I was talking about highway construction. The same thing would apply—we are getting ready in my home town, Petersburg, VA, with the help of the Small Business Administration, the Defense Logistics Agency—which just set up an office up in Petersburg—because of the heavy unemployment there, and heavy minority, to set up incubator businesses in a factory that had 4,000 employees, 2 years ago. So you know we don't know if it will work, but what we are trying to do is see whether it will or not and trying to attract people that not just will borrow money and set up a company, but someone that can really work to do it. It is not going to be easy, no question about that.

Ms. LEFTWICH. I certainly don't dispute that, I am simply saying based on our experience with military construction, which is different from Federal highway construction, that we think that it would take a period of time to develop the capability and expertise and capacity to perform 10 percent of that work.

Mr. MONTGOMERY. Thank you very much.

Mr. DELLUMS. The Chair would like to follow up. As you recall, earlier this morning, our first witness, the gentleman from Texas, Mr. Bustamante, provided testimony—and the Chair would like to read briefly from I think page 4 of that testimony—he says here:

Hispanic construction firms claim they are discouraged by Small Business Administration district and regional officials to apply for 8(a) certification, since officials explain that their portfolios are saturated, with construction enterprises.

I would appreciate it if you would comment on that and then the Chair would like to ask the gentlewoman this question: Is it a problem of how you certify or is it a problem that firms are not out there? And a follow-on question is: If they are not out there, what are you presently or what can you do to encourage the evolution of these firms out there so that they can obtain their appropriate share of the largess of the Government? Would you respond first to Mr. Bustamante's comment?

Would you want me to read it again?

Mr. GONZALEZ. I would appreciate it.

Mr. DELLUMS. He says here construction, " Hispanic construction firms claim they are discouraged by Small Business Administration district and regional officals to apply for 8(a) certification since officials claim that their portfolios are saturated with construction enterprises." Which seems to belie the testimony. On the one hand we are saying they are not out there, but this gentleman is saying that a number of Hispanics are discouraged because they are saturated with folks who engage in construction enterprises.

Mr. GONZALEZ. Yes, sir, I think I understand the question.

That really varies from district to district. I don't know whether Mr. Bustamante was referring to a cross section of our district offices around the country in terms of his data or whether he was referring to a particular district area, but certainly part of the services that we offer at each district level is an analysis done of the number of companies in a particular field—in this case it is construction. Then when an applicant comes in and says he would like to apply under the 8(a) program for construction and we find that the portfolios for that particular geographical area is saturated, then a proper response to that complaint would be that he not consider going into that business or going into that business in that particular area.

But across the board, we find that that has been favorable. We do have out of 926 construction contractors, as I had mentioned before, 274 of those firms are Hispanic.

Mr. DELLUMS. Then across the board are you concurring in the testimony of Ms. Leftwich, if a 10-percent requirement were established that you would have great difficulty attempting to reach that because the construction firms in the minority community are not out there?

Mr. GONZALEZ. No, sir, I don't think that I am in a position to concur without us doing a study of what the situation in determining that. I am a firm believer that we rise to the occasion and if the moneys are made available and contracts are made available, we are prepared to go out there and find the contractors.

Mr. DELLUMS. The Chair would think that as well. As we are starting down the road to the development of a star wars program and it is very interesting, once people heard there were going to be $25 billion generated in star wars over the next 5 years, firms started coming out of the woodwork, and it seems to me if we stand 10 percent, I think there are a lot of intelligent folks out there who would decide to go into that business, develop the necessary expertise to go after the resources.

I have served on this committee now for a number of years, and I know that lobbyists and contractors move where the money is, and they suddenly almost miraculously, overnight, develop the necessary capabilities to do that, and it just seems to me if we decided that was an appropriate goal, minority firms are intelligent enough, the minority people intelligent enough to gravitate toward the resources if we establish that for minorities and disadvantaged and women, it would seem to me—this is just this gentleman's humble opinion, based upon several years experience of firms following dollars in the Armed Services Committee—they would sure follow these dollars. That is just this gentleman's opinion.

I would appreciate it if the gentlewoman would respond to the question. That is, is it your testimony that it would be very difficult, if 10 percent were established, is this a problem of definition of how you certify or is that a problem of them not being out there? And finally, what are you presently doing to encourage more people and what do you do in the future? And finally, is my statement—which was not meant to be demogogic in any fashion—reasonable from your perspective?

Ms. LEFTWICH. The question of how you certify—again we are talking about specifically the certification under the 8(a) program—I would imagine would be a problem, perhaps a large problem in terms of massive increase in the number of 8(a) construction firms. Whether the Small Business Administration would be prepared to handle such certification, I don't know.

In terms of what are we doing to bring new firms into our base, that is a function of making our opportunity market available, but very honestly, we are not in the business of assisting new business to get started. That also is the charge of the Small Business Administration, and the Minority Business Development Agency. So our part of the equation is to ensure that we provide the requirements and the opportunities for new entrants, those growing firms to participate.

Could I have the other part of your questions, sir, again?

Mr. DELLUMS. The Chair was simply saying that my latter comments with respect to how star wars rates enthusiasm, how contracts tend to generate expertise. There are firms that build one thing suddenly overnight develop the capacity to build something else, because that is where the dollars are in research and dollars in procurement, and so forth. And the Chair in no way meant that statement to be demogogic, I meant it to be very serious. It is based upon experience. I was simply saying from my perspective is that reasonable, and that is, if we established a 10-percent set-aside—perhaps this is asking you for your judgment, but I think that is fair, if it isn't, you say so and we will move to something else—is it not your experience that if the resources are there, that people

tend to gravitate where the opportunities are. If you say 10 percent, that people would move into that area in order to fill up the vacuum?

Ms. LEFTWICH. I think the people gravitate to where the opportunities are. That they gravitate overnight, that they can build the expertise, the capacity and the capability to perform that quickly, I think this is another issue.

I think that we certainly insist that our requirements are performed in a quality manner. That track record, that past performance is a very important aspect of the program, and that the fact that we have a 10-percent requirement or set-aside, and that we automatically have many people generating to that particular business, does not tell me what timeframe it will take for those new firms to become capable to perform larger and larger requirements. So I think yes, there is an opportunity, but there is a time lag before such firms can perform at such a high level.

Mr. DELLUMS. Thank you very much.

The Chair indicated earlier that we were in receipt of the testimony of both persons prior to the hearings and we have a number of questions we have prepared as a result of reading your testimony earlier, and the Chair would like to go through them.

First, a question to the Department of Defense representative. Would you explain how the contracting officer determines whether a price is fair and reasonable for a small business 8(a) set-aside? And the follow-on to that is do you feel that the Government has been paying more for these services than it would have if there were no small business set-aside programs established?

Captain DALLAM. The fair and reasonable price is determined really by the contracting officer when he goes into the negotiations with the Small Business Administration and the 8(a) firm. He goes into that negotiation with a Government estimate, which is prepared in consultation with the designer and the Government office that will be doing the construction.

That Government estimate serves as the basis for his negotiations. The estimate reflects what current marketplace value is, what past jobs of this type have cost, what those jobs are costing on the marketplace now. It permits a comparison with what that type of construction would cost if it was bid competitively. I think our experience has indicated that we can't see a significant difference in the small business set-aside program. On the 8(a) set-asides, however, there may be some cost differential, during periods of low-construction activity, because of the lack of competitive bidding.

Mr. DELLUMS. Ms. Leftwich, would you explain the repetitive set-aside program and how that operates in construction and architect and engineering awards so we can understand that area?

Ms. LEFTWICH. There is no repetitive set-aside program in architectural and engineering and construction. That really goes to the purchasing of goods and other services. There is the $2 million automatic set-aside in construction, but each architectural and engineering requirement is considered on a case-by-case basis.

Mr. DELLUMS. Are there any goals established for the 8(a) program as you described for small business program. Would you explain it?

SECTION 8(a) GOALS

Ms. LEFTWICH. Yes, there are. We establish 8(a) goals for each military department and they in turn distribute those goals to each major contracting activity.

Mr. DELLUMS. Ms. Leftwich, you stated in your prepared remarks that each year projects are identified to be awarded under the 8(a) program. How are these contracts identified? Does the Small Business Administration have a listing of all 8(a) firms capable of doing the work, or do you select the contract and then look for the firm capable of doing the work?

Ms. LEFTWICH. There are three ways that we go about pursuing 8(a) contracts:

No. 1 is self-marketing by the 8(a) firms themselves. They come to our purchasing activities and present their credentials, their qualifications, and their capabilities to our contracting people in the hopes that matches with future requirements can be made.

The second method is that the Small Business Administration does, indeed, send out what they term search letters to our activities, looking for specific requirements for specific 8(a) firms and in turn, describing their capability.

Finally, our own contracting people, who have worked with this program for many years, have become very familiar with the capabilities of many of these 8(a) firms and are quite capable of choosing suitable requirements and offering them to the Small Business Administration. It is a broad based approach on how we identify them.

Mr. DELLUMS. Mr. Weatherholtz, would you explain exactly what type of marketing and technical assistance is provided to 8(a) firms by your administration?

Mr. WEATHERHOLTZ. I will defer to Mr. Gonzalez, Mr. Chairman. That is his program.

TYPE OF ASSISTANCE PROVIDED

Mr. GONZALEZ. Actually, in terms of marketing, although we do have what is called a business development specialist at district offices, our marketing capability for minority/small businesses has been very weak. Based on the staffing pattern that we have throughout the country and the size of the portfolio, we encourage all new applicants, all existing firms within our portfolio that the only way to success is if they market their particular company themselves.

Mr. DELLUMS. Now, you gentlemen stated that small businesses must submit a form 129 to each installation at which they desire to work. Could you explain to the subcommittee what this entails and why a single registration form filed at a central office indicating geographical regions for which they wish to be considered could not be used? Why do they have to do it at each specific facility? Can you tell me the advantages of that?

Mr. WEATHERHOLTZ. Presently there is no centralized system or data base for submitting the 129's. Each contractor or business wishing to bid on government contracts will fill out a form 129 and send that to each one of the procuring activities across the country.

We are looking forward to a system in the future when we can have a centralized bidders list. This is something that we are doing at the Small Business Administration, directly in my program. We are developing a centralized data base for bidders lists to become, potentially, the major source list for the Government. This system is called the procurement automated source system. It is an automated data bank of all small businesses that are interested in doing work with the Federal Government.

We are looking at enhancements that are going to be required to develop this program into a major source system for the Federal Government. We think it will be very beneficial to the small businesses across the country if we are able to develop that into a centralized system.

Mr. DELLUMS. Just one follow-on to this question. What are the present impediments to a centralized system? Why don't we have it now, is what the Chair is asking? What factor precludes you from having it? Is it constraining you, do you not have the funds?

Mr. WEATHERHOLTZ. That is it. Basically we have been in the embryonic stage of this program. We have 140,000 in the data base right now; firms that are interested in doing work with the Federal Government. We approximate at this point that it is going to cost us about $1.2 million annually. Now, we estimate that to go to 400,000 firms, which is the estimate if pass becomes the major source list for the Government, would cost us substantially more.

Given the considerations right now cost is certainly a major factor. We are, in coordination with the Office of Management and Budget, developing a joint study to see exactly what the costs will be and what the savings will be, in terms of dollars as well as personnel if this were to become the major Government source system.

So, presently, cost is the major consideration; then the capacity of our contractor; and then convincing the agencies that that is a sound, valid, and reliable source system from which they can draw and obtain good data.

Mr. DELLUMS. Thank you very much.

The Chair would like to indicate to the witnesses that the Chair has a number of additional questions we would appreciate your bearing with us this morning, because we want very desperately to become knowledgeable and we want to establish the fullest record possible, and so the Chair has a few additional questions I would like to ask. Then the Chair will assume the other two panels, would appear in the afternoon, if you could bear with us.

Ms. Leftwich, what assistance does Department of Defense give to small disadvantaged business firms wishing to compete for overseas contracts—we have to talk about overseas contracts—are any of these contracts set aside for either small business or small and disadvantaged businesses, and if not, why not?

Ms. LEFTWICH. Sir, it has been our experience that small construction firms do not have the capacity, financial capability, to compete and perform in the overseas markets. Quite frankly, in the 5 years that I have been in this office, I have heard no interest from the small construction firms to compete abroad. They are quite concerned in being able to compete domestically, so it is not a program that we have been able to get underway at all.

Mr. DELLUMS. Is there any requirement for the large architect and engineering construction contractors to subcontract with small and disadvantaged businesses on any contracts that they receive, and if so, explain the program, and if not, why not?

REQUIREMENTS FOR ARCHITECT AND ENGINEERING FIRMS

Ms. LEFTWICH. They are required to prepare a subcontracting plan that would have specific goals for small businesses, and goals for small and disadvantaged businesses, if they were to be awarded a contract over $500,000. That is the statutory threshold in Public Law 95-507.

As I understand it, we see very, very few architect and engineering contracts over $500,000 and the architects and engineers are not a subcontracting profession by definition. When they present themselves to the contractors selection board they present themselves with full teams. So we do not see very much subcontracting at all in the architectural and engineering area. In the construction area, again the statutory threshold is an award of $1 million. They must prepare and present a subcontracting plan with goals for most——

Mr. DELLUMS. I want both of you to know, though the gentleman, the Chair, represents a constituency on the west coast, this is not a parochial question. Given the procedure described earlier in the prepared testimony by Mr. Weatherholtz, on how small businesses are expected to find out about available contracts, such as through the Commerce Business Daily, do you believe that this places west coast firms at a disadvantage if they do not have Washington offices?

Again, as I said, this is not a parochial question, only seeking policy across the board.

Ms. LEFTWICH. Well, I believe that now the amount of time that is required for a synopsis to be in the Commerce Business Daily and the amount of time that it must remain open, probably is no burden on west coast firms if we are talking about using the CBD as a primary instrument. That is also why, particularly for firms out on the west coast who would be seeking to do business with the Corps of Engineers and Navy construction offices out there, that we encourage them to be on bidders' mailing lists because that is a procedure for direct solicitation from the activity.

It does not require that they depend upon the Commerce Business Daily for solicitation.

Mr. DELLUMS. This afternoon we will be hearing from another witness who states that the low bids received from the dredging industry under unrestricted advertisement were 9 percent lower than those received under the set-aside program. Thus by eliminating the set-aside program for construction, the Department of Defense would save just under $4 billion. Would either of you care to comment on this?

Captain DALLAM. Since our total construction program is under $10 billion I am sure the projection of $4 billion savings is in error but we can't respond in detail without the opportunity to review the data that the statement was based on.

Mr. DELLUMS. That is a fair response. What the Chair would like to do is we will receive this kind of testimony this afternoon. What we do is forward it to both of you and ask you to respond to the specifics of the assertion that the witness will make this afternoon.

Mr. SISISKY. Would you yield?

Mr. DELLUMS. Yes.

Mr. SISISKY. Did the captain say earlier there was no significant cost increase? What is significant?

Captain DALLAM. I was referring to the small business set-asides. They result in no significant cost difference. I think that is supported by the fact that a large number of small business firms very successfully compete on the jobs that are not set-aside. This indicates that the prices we are getting from them are good. The small business setasides are quite competitive, and very good, because there is good competition—7 and 8 and 10 bidders on each job.

On the other hand, for the 8(a) set-aside, the indication that I made there was no cost differential really would not apply. Clearly there may be a cost differential there because it isn't competition, it is negotiation.

Mr. SISISKY. Would the chairman repeat somebody is going to testify that it costs $4 billion?

Mr. DELLUMS. That is correct.

Mr. SISISKY. It was only $713 million set aside in construction. Am I correct?

Mr. DELLUMS. I am sorry.

Mr. SISISKY. Under 8(a) there was only $713 million, I think you testified?

Ms. LEFTWICH. For all minority that is total awards to small and disadvantaged businesses. That was a total of $713 million.

Mr. DELLUMS. This is no 8(a), this is small business setasides.

Mr. SISISKY. I apologize.

Ms. LEFTWICH. I would only offer that it certainly is speculative whether based on unrestricted costs versus cost on set-aside that you could then project that $4 billion could be saved if there were no set-aside program. You know, we feel the set-aside program, contributes significantly to maintaining an awful lot of small businesses in this industrial base, and without those businesses, I wonder what the cost implications would be because of the dominance in the market of a few large businesses.

Mr. DELLUMS. Ms. Leftwich, under the $85,000 cap, you stated in your remarks, that the number of set-asides and architectural and engineering contracts decreased while the total number of small business contracts under open competition increased. This seemed to indicate that more small businesses are participating in the open bid process. Do you see this as healthy or unhealthy for the Government and industry, and upon what basis do you make your assertion?

Ms. LEFTWICH. I believe that what I indicated was that the level of overall participation of small businesses has remained relatively constant on either a low level of set-aside or high level of set-asides, and what that indicates to us is that this particular industry is extremely competitive industry and that firms of all sizes, and particularly small firms, are able to compete quite well in the open marketplace.

I guess I conclude by saying we have a unique situation where the set-aside is not as compelling a factor in this particular industry as it might be in others.

Mr. WEATHERHOLTZ. We found the same, Mr. Chairman.

Mr. DELLUMS. I see.

Ms. Leftwich, do you believe that recent actions by the Small Business Administration to reduce the size standard for small business architectural and engineering firms will eliminate the need for the congressionally mandated $85,000 cap?

Ms. LEFTWICH. I sincerely hope so, and I believe that to be the case. We have always contended that the issues and the problems that we face have been a function of the erroneous size standard, size standards that are too large and that if you have an appropriate size standard, the set-aside market will adjust accordingly.

We do oppose any attempt to place a cap on set-asides.

Mr. DELLUMS. Now, you were present at the very beginning, so you were here when Mr. Bedell, our colleague, made his presentation and indicated that he would be offering an amendment to the fiscal year 1986 military construction authorization bill with respect to the $85,000 cap.

Does the Department of Defense have a position on that amendment that will be proposed at that time?

Ms. LEFTWICH. We have a position on the issue of the $85,000 cap that I would like to address and that we do support repeal of the cap. I would defer to Captain Dallam on any further comments on it.

Captain DALLAM. On the balance of Mr. Bedell's proposed amendment with regard to pricing for, as I understand it, no amendment has been offered and really the Department of Defense has not been asked for a position. So there is no formal position at this time.

Mr. DELLUMS. Just a few additional questions. Are all 8(a) set-aside contracts sole source?

Ms. LEFTWICH. By and large, they are negotiated with only one 8(a) source but there have been instances where we do run what we could call technical competitions between 8(a) firms.

Mr. DELLUMS. Can you define technical competitions for us?

TECHNICAL COMPETITIONS

Ms. LEFTWICH. That would be where we would ask two or more 8(a) firms to present their capabilities, a short form of proposal of how they would perform the work and then we would select, based on our evaluation of the two or three firms.

Mr. DELLUMS. Yes?

Captain DALLAM. If I might add something. It is really not sole source. The Small Business Administration may come forward with an 8(a) firm that we would then negotiate with, but if that negotiation does not result in a price that the Government representative feels is fair and reasonable, the small business 8(a) nominee is rejected, and we ask the Small Business Administration to provide another candidate with whom we can negotiate. That occasion arises very rarely, but clearly we don't feel that we are locked into having to award to that firm regardless of price.

Mr. WEATHERHOLTZ. An 8(a) firm offers a price, and the contracting officer has the authority to reject if it is not fair and reasonable. The Small Business Administration can go back and support another 8(a) firm for the contract.

Mr. DELLUMS. Let me ask you, Mr. Weatherholtz, is there any feasibility to using competitive procedures under the section 8(a) set-aside program based on your experience?

Mr. WEATHERHOLTZ. I think that, Mr. Chairman, we can support competitive pricing in the 8(a) negotiations.

Mr. Gonzalez, would you like to add to that?

Mr. DELLUMS. Is it feasible—you mentioned you could support it—is that a feasible idea from your perspective?

Mr. WEATHERHOLTZ. I believe it is a feasible idea because ultimately the contractors are going to, once they develop, go out and compete in the open market if they are going to grow and survive. Therefore, I think it is feasible; yes, sir.

Ms. LEFTWICH. If I might add to that, I am not sure about price competition in the 8(a) program, but I think that technical competition among 8(a) contractors of comparable capability is certainly something that must be looked at. I think competition in the 8(a) program is an idea whose time has come. I do believe it has to be carefully structured.

Mr. WEATHERHOLTZ. We can support that too, Mr. Chairman.

The 8(a) program is a very viable program and we think that it does help enhance competition in the market. We think it helps a small business succeed and helps enhance the industrial base and meet defense needs. The 8(a) contractors definitely are going to be a part, and are a part of increasing competition in the market. This program contributes, I think significantly, to that end.

Mr. SISISKY. Maybe I am missing something here. You said that by being able to get into a bid process with other 8(a), it would help them to develop and add to the competitive world. Is there no reason, do we have a graduating time for any 8(a) contractors?

Mr. WEATHERHOLTZ. Yes, sir.

Mr. SISISKY. What is the length of time?

Mr. WEATHERHOLTZ. We have a fixed participation time of 7 years.

Mr. SISISKY. Seven years?

Mr. WEATHERHOLTZ. Yes, sir.

Mr. SISISKY. That would give some incentive. I thought it was open-ended. We are having trouble getting people to graduate.

Mr. WEATHERHOLTZ. No, sir. The graduating time, Mr. Congressman, was set in 1982.

Mr. DELLUMS. The Chair just would like to first say there are a number of additional questions that we will submit to the appropriate witnesses and ask you to respond for the record. And prior to yielding to the gentleman from New York, Mr. Martin, the Chair just has one additional observation and would appreciate it if either of you or both of you—certainly Mr. Weatherholtz—appreciate it if you would respond.

Several years ago, we looked at the issue of minority and women's firms not being able to compete, so they set up the 8(a) program to provide an opportunity for them to get inside, to gain the experience. But from this gentleman's observations there ap-

pears to now be a new set of problems emerging, and that is, that firms "graduate" from 8(a) and then are told that they are now competitive at the very same time that corporations are becoming larger and consolidating, and it seems to me that what we are doing from my perspective, is graduating minority and disadvantaged firms from 8(a) into total oblivion because they cannot compete with Westinghouse and other firms who are engaging in diversification and going after contracts in a whole range of areas, and the Chair would like to know and ask you to comment to the subcommittee what procedures are in place to allow the transition to take place from 8(a) to competition with firms who have an extraordinary capability to compete at a very sophisticated level, perhaps with more political clout, more access to huge sums of capital.

How do these guys who are suddenly told you now have graduated, you are no longer a disadvantaged firm, go out and compete, and they suddenly go right down the tubes because they can't compete. Is that observation incorrect? If you are going to see that, beginning to see that new generation of problems emerging, please respond to the (b) part of the question—what processes are in place at this point to help the transition in this transition period?

PROTECTION FROM BIG BUSINESS

Mr. WEATHERHOLTZ. Initially, Mr. Chairman, I would like to respond to that question, and then Mr. Gonzalez may have something he would like to add.

The set-aside program is something that we think is an available tool to help the small and disadvantaged businesses, particularly firms after they come out of the 8(a) program. They are eligible to participate in the set-aside program. The set-aside program, in addition to other things, also protects those small and disadvantaged firms against the giants. It puts them in the arena, of competing among other firms equal to their size, stature, and ability to bid competitively. So the small business set-aside program is certainly a tool that we use in helping these firms train in this situation.

Additionally, the Small Business Administration is presently reorganizing its management assistance function into a business development function. This function will reach out and market the Small Business Administration's programs to the small business community across the country, and help them develop and help them identify assistance that they may need from the Small Business Administration and/or services outside the administration that may be helpful.

We also have under that program our Service Corps of Retired Executives and the Active Corps of Executives. These are retired and current former contractors and business people who can assist small businesses in their endeavor to make the transition and develop into fully competitive organizations.

In addition, our office, the Office of Procurement Assistance, offers assistance. We have regional and district offices that offer assistance to the small businesses in doing work with the Federal Government. We have 55 procurement center representatives covering 250 Government installations across the country. In addition to looking at contracts and screening contracts for set-aside, they

also offer counseling assistance to small businesses and to 8(a) firms as well, in how to do work with the Federal Government.

We have the breakout program, which is coming on board now, and I think that is going to help also.

Mr. DELLUMS. The Chair would like to indicate, Mr. Gonzalez, before you testify, that I appreciate the response to the (b) part of my question because I think you have answered what you think your agency is doing with respect to transition. The Chair appreciated that.

Could you also comment on the (a) part of the question, and that is, is the information that the Chair is receiving, or the Chair's observation a reasonable one, is it true that there are firms who are in some way falling through the cracks when they are called upon to have to be competitive at another level, and just going down the tubes? Because it has been my experience that there are a number of firms who have started to gear up and to really think that they are part of this whole thing, and when they are forced to become competitive, they have just been wiped out.

Mr. WEATHERHOLTZ. If they are falling through the cracks we would certainly like to know about it. In my role as Associate Administrator for Procurement Assistance, I am marketing our program across the country, making the small businesses more aware of services that we provide and of the opportunities that exist in the Federal marketplace.

We have a program that is helping train procurement assistance personnel down to the district level. Presently we have procurement assistance functions at the regional level. However, we have a train the trainer program which trains our own personnel within Small Business Administration. We are taking this down to the district level so that we can have more of a local service delivery system in helping these firms that are having trouble doing business with the Federal Government.

We have our procurement center representatives, our business development personnel; and we are encouraging our district directors to participate in procurement conferences, workshops, and seminars where we can reach out and touch these small firms that are having difficulties doing work with the Federal Government. So our doors are open, Mr. Chairman, and we certainly encourage any small businesses that are having problems with competition or being competitive, to contact us.

Mr. DELLUMS. Thank you very much, Mr. Gonzalez.

Mr. GONZALEZ. Yes, Mr. Chairman.

In response to your questions, both (a) and (b), on the subpart (a), we do agree that we have seen some cases brought before us of companies that have gone down the tubes, as you say, after graduation. However, we cannot determine whether the fault lies with us or the fault lies with the company. We continue to provide technical assistance to these companies during their lifetime in the portfolio and insist and emphasize that they look at their total, their own portolio in terms of non-8(a) contracting work.

FIXED PROGRAM PARTICIPATION TIME

Regarding their fixed program participation time [FPPT], that 7 years maximum that may be allocated, we continuously tell them that at the point of graduation they will not have the kinds of benefits that they have been enjoying and they have to gear up appropriately. But we are concerned. Both MBS program and MBDA under the Department of Commerce, are working on a task force to look at the whole aspect of helping during the transition phase for graduated 8(a) companies.

One of our priorities for 1986—out of three priorities that we have identified to the Administrator—is that we gear up not only ourselves but gear up our companies in our portfolio for the possibility of dealing with the competitive world outside of the 8(a) program. Some of the examples of things that we do along the way is the trade fairs that we hold every year in order to introduce these companies to procurement agencies and to give them as much visibility as possible in terms of their particular skills. And also under the 7(j) program, where we fund organizations or companies to provide management assistance, to provide marketing skills, to provide capabilities for feasibility studies for carrying on in the world outside of 8(a).

Mr. DELLUMS. Thank you very much.

Any further responses?

Ms. LEFTWICH. Mr. Chairman, if I might offer my own personal observation, I think that probably the verdict is still out on what is going to happen to the graduating 8(a) firms. I don't know that we have had enough experience on enough firms who have failed. I think a couple of things have occurred—you certainly may have 8(a) firms that come out of the program and do fail; you may see 8(a) firms that come out and suffer reduction in their business base that may be recouped with time. However, it is my very firm opinion that the transition to a competitive environment must be made during the time they are in the 8(a) program and that the 8(a) program must do a better job of developing competitive entities before these firms are thrust into the competitive marketplace.

Mr. DELLUMS. Thank you very much.

The Chair would now yield to the gentleman from New York, Mr. Martin, for such time as he may consume.

Mr. MARTIN. I thank the chairman and want to apologize for not getting here until 11 o'clock. I had an airline problem. I want very much to be part of this and to be educated as to all the intracacies of this program, and I only wish that this afternoon we didn't have the environmental restoration panel as well as the farm bill on the floor, but welcome to Washington.

A question—and this falls under the heading of trying to educate me—these set-aside programs for small businesses and for minorities, very laudable purposes without question. We always try to do the right thing here irrespective of what the public might think, and irrespective of the way things might turn out, and there have been a lot of successes and a lot of people have had the opportunity they wouldn't have had without this to be out in the contracting business and get a shot at their share of the American dream, so to speak.

But I noted my colleague, Mr. Bustamante, his comments to which the chairman referred, pointed out the Hispanic firms complained to him, I assume in and around his district, that they had difficulties in obtaining 8(a) certification because they say they were discouraged, felt discouraged because the portfolios are saturated with construction enterprises. Whether that is so or not, that is what the Congressman was told by his constituents.

On the flip side of this coin, there are areas in this vast country where you literally have to go hundreds of miles to recruit someone who is eligible under the statute, and go past areas a lot of construction firms that don't happen to have any minorities in the area, don't have those firms. It does cause artificial dislocation to go 300 or 400 miles to try to find a construction firm that is women or minorities, or whatever.

Is there any way in those sets of circumstances that anybody has any flexibility to weigh this or must that continue? What I am saying is, if you have an area that by virtue of the population in the way, demographic area, where there are no numbers of people who are categorized as minorities, they don't have those kind of firms and they have to go recruiting hundreds of miles from the site of the job to find somebody to fulfill that set-aside. Is that ever brought to your attention?

Ms. LEFTWICH. Let me take a stab at that. The small business set-aside program does not turn on——

Mr. MARTIN. Is that for small business?

Ms. LEFTWICH. Yes. At least from the procuring agency's point of view, when we make an offering to the 8(a) program, if there is no firm available, then the requirement is turned back to the contracting activity.

Mr. MARTIN. What is the regional aspect, is there a regional aspect, that is what I am asking, no firm able, you can't find a firm in the United States?

Ms. LEFTWICH. I don't believe that there is a regional aspect.

Mr. MARTIN. Has that ever been brought to your attention, Small Business Administration raises a problem or question, to your knowledge?

Mr. WEATHERHOLTZ. No sir.

Mr. MARTIN. We will talk further about that I guess.

This point on page 6 of your statement, Ms. Leftwich, it is pretty impressive figures, as to the success of the program, and I am wondering what your opinion is about percentages and where they ought to be set and should there be any flexibility. We have so many success stories in the contracting business, a lot better than it was 20 years ago. Could you speak to how you feel about a percentage, should there be one, should it be higher or lower or——

PERCENTAGE OF SMALL BUSINESS PARTICIPATION

Ms. LEFTWICH. In the construction industry are we pleased with the percentages of small business participation? Yes, generally, we certainly are pleased. Seventy-five percent of our construction awards strikes me as a good fair share ball park figure for 97 percent of the construction firms being involved.

The percentages are difficult. The question can also be asked is it fair that then 3 percent of the firms get 25 percent of the requirements. I think we always struggle with what the right balance of percentages is, but we are certainly very pleased, at least at Department of Defense, with the way these percentages are shown.

Mr. MARTIN. That 3 percent of the firms which you referred to, does that take into consideration the subcontracts and who eventually does the work?

Ms. LEFTWICH. These are prime contracts. These are only prime contract awards that are reflected here.

Mr. MARTIN. So that 3 percent——

Ms. LEFTWICH. Twenty-five percent of the——

Mr. MARTIN. Ninety percent of that could be ineligible firms for all we know. As far as the size of the firms doing the subcontract work, the percentage of that could be——

Ms. LEFTWICH. Going back to small businesses, yes.

Mr. MARTIN. Do you have any feel for that, what percentage that would be, what part of that 3 percent?

Ms. LEFTWICH. I would have to get that for you. I do have the subcontracting figures on construction.

[The following information was supplied for the record:]

As I mentioned that only 3 percent of the construction firms are considered to be large business by the Small Business Administration's size standards. However, these 3 percent of the firms received 24.8 percent of our construction awards which were made on a prime contract basis by DOD construction activities. The large business firms may have also received additional subcontract awards from other prime contractors but we have no information system that collects this sort of data.

Mr. MARTIN. Could you speak to me about the origin of this rule of two, explain why that is limited to just a few industries, as I understand it?

Ms. LEFTWICH. The rule of two or more was an initiative by the Department of Defense to quantify the sufficiency of competition for a small business set-aside. Previous to this, I think in 1975, we used the criteria of sufficient number of firms, if offers have been received from sufficient number of firms you may set aside a requirement. We found that the term "sufficient" was subject to a great deal of intrepretation by about 40,000 people. We simply felt that it was very necessary to quantify the number of firms by which you would be authorized to make a set-aside and the receipt two offers has always been a standard of competition.

Mr. MARTIN. And this applies to all industries or just a few?

Ms. LEFTWICH. It applies to our entire set-aside program, yes, through all of the categories of purchases in Department of Defense.

Mr. MARTIN. I yield back at this time.

Mr. DELLUMS. The gentleman yields back his time.

The Chair would like to, on behalf of the members of the subcommittee and staff, thank you, Ms. Leftwich, Mr. Weatherholtz, Mr. Gonzalez, and Captain Dallam very much for your contribution this morning. We deeply appreciate it and we think that you have made a significant contribution to our effort here in educating the subcommittee.

Mr. MARTIN. We will have the opportunity to submit additional questions?

Mr. DELLUMS. That is correct, and the Chair indicated to the witness prior to your questioning that we would submit a number of questions and request that we would ask them to respond to them in writing.

[The following questions were submitted to the witnesses to be answered for the record:]

DEPARTMENT OF DEFENSE

Question: Are the Brooks Law architect-engineer selection procedures in conflict with the new "push" toward "full and open competition" as expressed in the Competition in Contracting Act of 1984?

Answer: No. In fact, the Act defines the Brooks A-E selection procedures as "competitive." Specifically, the Competition in Contracting Act of 1984, Title VII, Subtitle B, Sec 2722 amends section 2302 of Title 10, United States Code to read:

(2) "Competitive Procedures" means procedures under which the head of an agency enters into a contract pursuant to full and open competition. Such term also includes -

(A) Procurement of architectural or engineering services conducted in accordance with Title IX of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 541, et seq).

Question: DoD has generally noted that the Brooks Law architect-engineer selection procedures have worked well. Is there any risk that changing the procedures for selection of design contractors would have operational impact on the Military Construction program?

Answer: Yes. A new procedure could result in longer selection times and could require additional personnel to administer. This would adversely impact the Department's ability to achieve 35% design before the President's budget is submitted to the Congress. Also, changing procedures with no transition time allowed for developing and implementing internal DoD procedures could halt architect-engineer selections for months. This too, would jeopardize our ability to achieve 35% design when required. If additional personnel are required, additional design funds would be required to pay their salaries.

Also, depending on the type of change to existing procedures that is being considered, it could possibly impact on the quality of the design effort and thereby impact on construction or life cycle costs.

In summary, new A-E selection procedures could result in the deferral of essential construction needed to support the operation of weapon systems and to improve the quality of life of our personnel. Also, design, construction, and life cycle costs could increase. Therefore, any proposed change should be closely examined, evaluated, and tested before being implemented.

Question: Is there any connection between the method of selecting architect-engineer contractors and the follow-on construction contracting effort?

Answer: Since the method of selecting A-Es has an impact on the quality of design effort secured, it therefore has a great influence on construction cost and the relative degree of success or difficulty experienced in the resulting construction effort (change orders, ambiguities and claims).

Question: With respect to DoD's small business utilization program and its impact on the architect-engineer industry, is it true that because this industry consists mainly of smaller firms it has been disproportionately targeted for small business set-asides by DoD? What is the level of DoD small business set-asides in other industry sectors?

Answer: We do not believe that architect-engineer awards have "been disproportionately targeted for small business set-asides by DoD." The primary factor that drives the rate of set-asides is the level at which the small business size standard is established by the Small Business Administration which in turn determines just how

many or how few firms will make up the small business community for a particular class of supplies or services. See attached table for set-asides as they apply to 26 categories of supplies and services purchased by DoD during FY 1984.

Question: With respect to the $85,000 cap on small business set-asides of A/E contracts in DoD, we understand that DoD does not favor the cap approach. Isn't it true that DoD's office of Small and Disadvantaged Business Utilization, working with the architect-engineer industry, originated the idea of the cap and sought to impose it administratively?

Answer: The DoD Office of Small and Disadvantaged Business Utilization did concur with the view that a problem existed with the set-aside program in this particular industry. We identified the problem as an unreasonable size standard. While we were willing to temporarily impose a cap, the cap was to be removed when a new reduced size standard was promulgated.

Question: We understand that under the law, the Secretary of Defense has the authority to periodically adjust the set-aside cap for purposes of ensuring that a "fair share" of contracting opportunities are available to small business. Does DoD currently have plans to make such an adjustment?

Answer: Yes, the Secretary of Defense does have the authority to adjust the set-aside cap. Our plans at this time are to analyze the architectural and engineering award data, when it becomes available, to determine if an adjustment is necessary.

Question: Recently SBA published a rulemaking proposal advancing a $1.5 million small business size standard for architectural and engineering services. We understand this is the fifth such rulemaking proposal affecting the A/E industry since 1980. Is SBA confident that it has now effectively addressed the issue of the A/E size standard?

Answer: This reply to be furnished by the Small Business Administration.

Question: Provide for the record copies of Forms 254 and 255 as well as a "10 sheet" used for submission by A/E's.

Answer: The information follows.

STANDARD FORM (SF)

254 Architect-Engineer and Related Services Questionnaire

Form Approved
OMB No. 3090-0026

Purpose:

The policy of the Federal Government in acquiring architectural, engineering, and related professional services is to encourage firms lawfully engaged in the practice of those professions to submit annually a statement of qualifications and performance data. Standard Form 254, "Architect-Engineer and Related Services Questionnaire" is provided for that purpose. Interested A-E firms (including new, small, and/or minority firms) should complete and file SF 254's with each Federal agency and with appropriate regional or district offices for which the A-E is qualified to perform services. The agency head for each proposed project shall evaluate those qualification statements, together with any other performance data on file or requested by the agency, in relation to the proposed project. The SF 254 may be used as a basis for selecting firms for discussions, or for screening firms preliminary to inviting submission of additional information.

Definitions:

"Architect-engineer and related services" are those professional services associated with research, development, design and construction, alteration, or repair of real property, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform, including studies, investigations, surveys, evaluations, consultations, planning, programming, conceptual designs, plans and specifications, cost estimates, inspections, shop drawing reviews, sample reviews, preparation of operating and maintenance manuals, and other related services.

"Parent Company" is that firm, company, corporation, association, or conglomerate which is the major stockholder or highest tier owner of the firm completing this questionnaire. I.e. Firm A is owned by Firm B which is, in turn, a subsidiary of Corporation C. The "parent company" of Firm A is Corporation C.

"Principals" are those individuals in a firm who possess legal responsibility for its management. They may be owners, partners, corporate officers, associates, administrators, etc.

"Discipline", as used in this questionnaire, refers to the primary technological capability of individuals in the responding firm. Possession of an academic degree, professional registration, certification, or extensive experience in a particular field of practice normally reflects an individual's primary technical discipline.

"Joint Venture" is a collaborative undertaking by two or more firms or individuals for which the participants are both jointly and individually responsible.

"Consultant", as used in this questionnaire, is a highly specialized individual or firm having significant input and responsibility for certain aspects of a project and possessing unusual or unique capabilities for assuring success of the finished work.

"Prime" refers to that firm which may be coordinating the concerted and complementary inputs of several firms, individuals or related services to produce a completed study or facility. The "prime" would normally be regarded as having full responsibility and liability for quality of performance by itself as well as by subcontractor professionals under its jurisdiction.

"Branch Office" is a satellite, or subsidiary extension, of a headquarters office of a company, regardless of any differences in name or legal structure of such a branch due to local or state laws. "Branch offices" are normally subject to the management decisions, bookkeeping, and policies of the main office.

Instructions for Filling (Numbers below correspond to numbers contained in form):

1 Type accurate and complete name of submitting firm, its address, and zip code.

1a Indicate whether form is being submitted in behalf of a parent firm or a branch office. (Branch office submissions should list only personnel in, and experience of, that office.)

2 Provide date the firm was established under the name shown in question 1.

3 Show date on which form is prepared. All information submitted shall be current and accurate as of this date.

4 Enter type of ownership, or legal structure, of firm (sole proprietor, partnership, corporation, joint venture, etc.).

Check appropriate boxes indicating if firm is (a) a small business concern, (b) a small business concern owned and operated by socially and economically disadvantaged individuals, and (c) Women-owned. (See 48 CFR 19.101 and 52.219-9).

5 Branches of subsidiaries of large or parent companies, or conglomerates, should insert name and address of highest tier owner.

5a. If present firm is the successor to, or outgrowth of, one or more predecessor firms, show name(s) of former entity(ies) and the year(s) of their original establishment.

6 List not more than two principals from submitting firm who may be contacted by the agency receiving this form. (Different principals may be listed on forms going to another agency.) Listed principals must be empowered to speak for the firm on policy and contractual matters.

7 Beginning with the submitting office, list name, location, total number of personnel and telephone numbers for all associated or branch offices, (including any headquarters or foreign offices) which provide A-E and related services.

7a. Show total personnel in all offices. (Should be sum of all personnel, all branches.)

8 Show total number of employees, by discipline, in submitting office. (If form is being submitted by main or headquarters office, firm should list total employees, by discipline, in all offices.) While some personnel may be qualified in several disciplines, each person should be counted only once in accord with his or her primary function. Include clerical personnel as "administrative." Write in any additional disciplines—sociologists, biologists, etc.—and number of people in each, in blank spaces.

9 Using chart (below) insert appropriate index number to indicate range of professional services fees received by submitting firm each calendar year for last five years, most recent year first. For summaries, should be broken down to

STANDARD FORM (SF)

254 Architect-Engineer and Related Services Questionnaire

reflect the fees received each year for (a) work performed directly for the Federal Government (not including grant and loan projects) or as a sub to other professionals performing work directly for the Federal Government, (b) all other domestic work, U.S. and possessions, including Federally-assisted projects, and (c) all other foreign work.

Ranges of Professional Services Fees

FEES		FEES	
1	Less than $100,000	5	$1 million to $2 million
2	$100,000 to $250,000	6	$2 million to $5 million
3	$250,000 to $500,000	7	$5 million to $10 million
4	$500,000 to $1 million	8	$10 million or greater

10 Select and enter, in numerical sequence, not more than thirty (30) "Experience Profile Code" numbers from the listing (next page) which most accurately reflect submitting firm's demonstrated technical capabilities and project experience. Carefully review list. (It is recognized some profile codes may be part of other services or projects contained on list, firms are encouraged to select profile codes which best indicate type and scope of services provided on past projects.) For each code number, show total number of projects and gross fees (in thousands) received for profile projects performed by firm during past few years. If firm has one or more capabilities not included on list, insert same in blank spaces at end of list and show numbers in question 10 on the form. In such cases, the filled in listing must accompany the complete SF 254 when submitted to the Federal agencies.

11 Using the "Experience Profile Code" numbers in the same sequence as entered in item 10, give details of at least one recent (within last five years) representative project for each code number, up to a maximum of thirty (30) separate projects, or portions of projects, for which firm was responsible. (Project examples may be used more than once to illustrate different services rendered on the same job. Example: a dining hall may be part of an institutional or educational facility.) Firms which select less than thirty "profile codes" may list two or more project examples (to illustrate specialization) for each code number so long as total of all project examples does not exceed thirty (30). After each code number in question 11, show (a) whether firm was "P," the prime professional, or "C," a consultant, or "JV," part of a joint venture on that particular project (New firms, in existence less than five (5) years may use the symbol "E" to indicate "Individual Experience" as opposed to firm experience), (b) provide name and location of the specific project which typifies firm's (or individual's) performance under that code category, (c) give name and address of the owner of that project (if government agency indicate responsible office), (d) show the estimated construction cost (or other applicable cost) for that portion of the project for which the firm was primarily responsible (Where no construction was involved, show approximate cost of firm's work), and (e) state year work on that particular project was, or will be, completed.

12 The completed SF 254 should be signed by a principal of the firm, preferably the chief executive officer.

13 Additional data, brochures, photos, etc. should not accompany the form unless specifically requested.

NEW FIRMS (not reorganized or recently-amalgamated firms) are eligible and encouraged to seek work from the Federal Government in connection with performance of projects for which they are qualified. Such firms are encouraged to complete and submit Standard Form 254 to appropriate agencies. Questions on the form dealing with personnel or experience may be answered by citing experience and capabilities of individuals in the firm, based on performance and responsibility while in the employ of others. In so doing, notation of this fact should be made on the form. In question 9, write in "N/A" to indicate "not applicable" for those years prior to firm's organization.

Experience Profile Code Numbers for use with questions 10 and 11			
001 Acoustics, Noise Abatement	042 Harbors, Jetties, Piers, Ship Terminal Facilities	086 Radar, Sonar, Radio & Radar Telescopes	
002 Aerial Photogrammetry	043 Heating, Ventilating, Air Conditioning	087 Railroad, Rapid Transit	
003 Agricultural Development; Grain Storage; Farm Mechanization	044 Health Systems Planning	088 Recreation Facilities (Parks, Marinas, Etc.)	
004 Air Pollution Control	045 Highways; Air Rights; Tube Buildings	089 Rehabilitation (Buildings, Structures, Facilities)	
005 Airports; Navaids; Airport Lighting	046 Highways; Streets; Airfield Paving; Parking Lots	090 Resource Recovery; Recycling	
006 Airport Terminals & Hangars; Freight Handling	047 Historical Preservation	091 Radio Frequency Systems & Shielding	
007 Arctic Facilities	048 Hospital & Medical Facilities	092 Rivers, Canals, Waterways, Flood Control	
008 Auditoriums & Theaters	049 Hotels, Motels	093 Safety Engineering, Accident Studies, OSHA Studies	
009 Automation, Controls, Instrumentation	050 Housing (Residential, Multi-Family; Apartments; Condominiums)	094 Security Systems, Intruder & Smoke Detection	
010 Barracks; Dormitories	051 Hydraulics & Pneumatics	095 Seismic Designs & Studies	
011 Bridges	052 Industrial Buildings, Manufacturing Plants	096 Sewage Collection, Treatment and Disposal	
012 Cafeterias, Restaurants	053 Industrial Processes; Quality Control	097 Soils & Geology; Studies, Foundations	
013 Chemical Processing & Storage	054 Industrial Waste Treatment	098 Solar Energy Utilization	
014 Churches, Chapels	055 Interior Design; Space Planning	099 Solid Wastes; Incineration, Land Fill	
015 Codes, Standards, Ordinances	056 Irrigation, Drainage	100 Special Environments; Clean Rooms, Etc.	
016 Cold Storage, Refrigeration, Fast Freeze	057 Judicial and Courtroom Facilities	101 Structural Design; Special Structures	
017 Commercial Buildings (low rise) Shopping Centers	058 Laboratories; Medical Research Facilities	102 Surveying, Platting, Mapping, Flood Plain Studies	
018 Communications Systems; TV; Microwave	059 Landscape Architecture	103 Swimming Pools	
019 Computer Facilities; Computer Service	060 Libraries; Museums; Galleries	104 Storm Water Handling & Facilities	
020 Conservation and Restoration	061 Lighting (Interiors; Display; Theatre, Etc.)	105 Telephone Systems (Rural, Mobile, Intercom, Etc.)	
Management	062 Lighting (Exteriors; Streets; Memorials; Athletic Fields, Etc.)	106 Testing & Inspection Services	
021 Construction Management	063 Materials Handling Systems; Conveyors; Sorters	107 Traffic & Transportation Engineering	
022 Corrosion Control; Cathodic Protection; Electrolysis	064 Metallurgy	108 Towers (Self Supporting & Guyed Systems)	
023 Cost Estimating	065 Microclimatology; Tropical Engineering	109 Tunnels & Subways	
024 Data (Concrete, Arctic)	066 Military Design Standards	110 Urban Renewals; Community Development	
025 Data (Earth, Rock); Dikes, Levees	067 Mining & Underground	111 Utilities (Gas & Steam)	
026 Demolition (Process & Facility)	068 Missile Facilities (Silos, Fuels, Transport)	112 Value Analysis, Life-Cycle Costing	
027 Dining Halls, Clubs, Restaurants	069 Modular Systems Design; Pre Fabricated Structures or Components	113 Warehouses & Depots	
028 Ecological & Archeological Investigations	070 Naval Architecture; Off Shore Platforms	114 Water Resources, Hydrology, Ground Water	
029 Educational Facilities; Classrooms	071 Nuclear Facilities; Nuclear Shielding	115 Water Supply, Treatment and Distribution	
030 Electronics	072 Office Buildings, Industrial Parks	116 Wind Tunnels, Research/Testing Facilities Design	
031 Energy Conservation, New Energy Sources	073 Oceanographic Engineering	117 Zoning, Land Use Studies	
032 Environmental Impact Studies, Assessments or Statements	074 Oceanic; Maritime; Special Weapons	201	
033 Fallout Shelters; Blast Resistive Design	075 Petroleum Exploration, Refining	202	
034 Field Houses, Gyms, Stadiums	076 Petroleum and Fuel (Storage and Distribution)	203	
035 Fire Protection; Fire Ladders	077 Pipelines (Cross Country—Liquid & Gas)	204	
036 Forestry & Forest Products	078 Planning (Community, Regional, Urban)	205	
037 Fisheries; Fish Ladders	079 Planning (Site, Installation, and Project)	206	
038 Garages; Vehicle Maintenance Facilities; Parking Decks	080 Plumbing & Piping Design		
039 Gas Systems (Propane, Natural, Etc.)	081 Prestressed Structures; Air Supported Buildings		
040 Graphic Design	082 Postal Facilities		
041	083 Power Generation, Transmission, Distribution		
	084 Prisons & Correctional Facilities		
	085 Product, Machine & Equipment Design		

STANDARD FORM (SF)

254

Architect-Engineer and Related Services Questionnaire

1. Firm Name / Business Address:

2. Year Present Firm Established:

3. Date Prepared:

4. Specify type of ownership and check below, if applicable

- A Small Business
- B Small Disadvantaged Business
- C Women-owned Business

1a. Submittal is for ☐ Parent Company ☐ Branch or Subsidiary Office

5. Name of Parent Company, if any:

5a. Former Parent Company Name(s), if any, and Year(s) Established:

6. Names of not more than Two Principals to Contact: Title / Telephone

1)
2)

7. Present Offices: City / State / Telephone / No. Personnel Each Office

7a. Total Personnel

8. Personnel by Discipline: *(List each person only once, by primary function.)*

- ___ Administrative
- ___ Architects
- ___ Chemical Engineers
- ___ Civil Engineers
- ___ Construction Inspectors
- ___ Draftsmen
- ___ Ecologists
- ___ Economists
- ___ Electrical Engineers
- ___ Estimators
- ___ Geologists
- ___ Hydrologists
- ___ Interior Designers
- ___ Landscape Architects
- ___ Mechanical Engineers
- ___ Mining Engineers
- ___ Oceanographers
- ___ Planners: Urban/Regional
- ___ Sanitary Engineers
- ___ Soils Engineers
- ___ Specification Writers
- ___ Structural Engineers
- ___ Surveyors
- ___ Transportation Engineers

9. Summary of Professional Services Fees Received: (Insert index number)

	Last 5 Years (most recent year first)				
	19____	19____	19____	19____	19____
Direct Federal contract work, including overseas					
All other domestic work					
All other foreign work*					

*Firms interested in foreign work, but without such experience, check here: ☐

Ranges of Professional Services Fees

INDEX	
1	Less than $100,000
2	$100,000 to $250,000
3	$250,000 to $500,000
4	$500,000 to $1 million
5	$1 million to $2 million
6	$2 million to $5 million
7	$5 million to $10 million
8	$10 million or greater

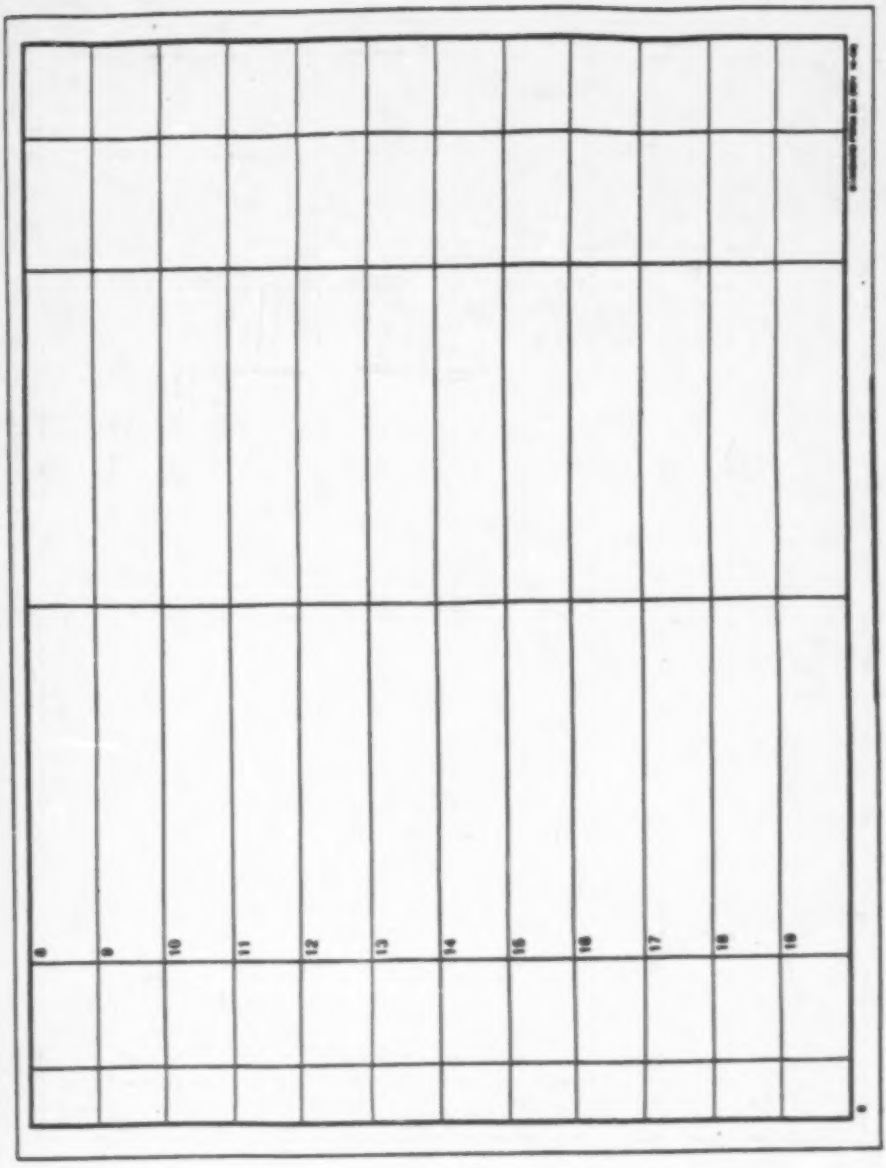
10. Profile of Firm's Project Experience, Last 5 Years

Profile Code	Number of Projects	Total Gross Fees (in thousands)	Profile Code	Number of Projects	Total Gross Fees (in thousands)	Profile Code	Number of Projects	Total Gross Fees (in thousands)
11			11			21		
12			12			22		
13			13			23		
14			14			24		
15			15			25		
16			16			26		
17			17			27		
18			18			28		
19			20			30		

11. Project Examples, Last 5 Years

Profile Code	"P", "C", "M", or "E"	Project Name and Location	Owner Name and Address	Cost of Work (in thousands)	Completion Date (Actual or Estimate)
		1			
		2			
		3			
		4			
		5			
		6			
		7			

8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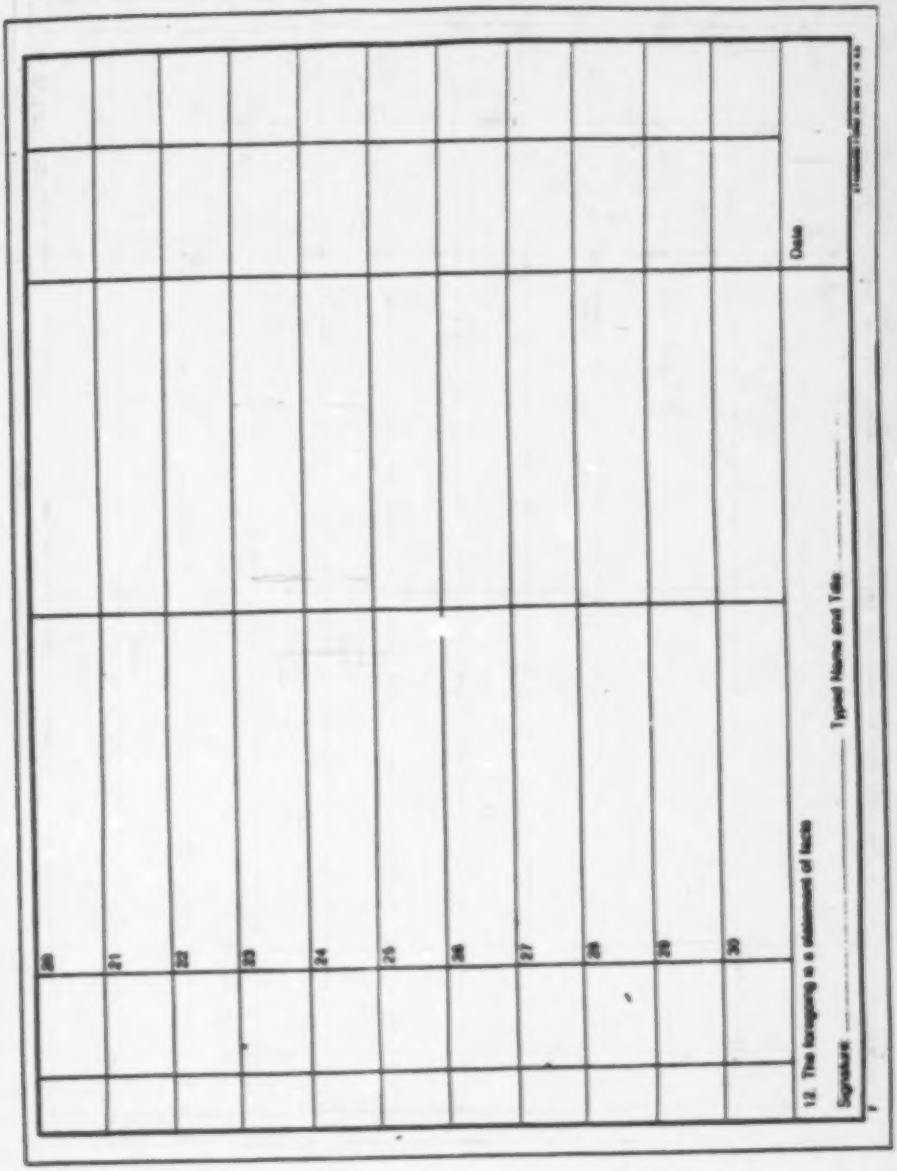
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26
27
28
29
30
Date
12. The foregoing is a statement of facts
Signature _____ Typed Name and Title _____

STANDARD FORM (SF)

255 Architect-Engineer and Related Services Questionnaire for Specific Project

Form Approved
OMB No. 3090-0029

Purpose:

This form is a supplement to the Architect-Engineer and Related Services Questionnaire (SF 254). Its purpose is to provide additional information regarding the qualifications of interested firms to undertake a specific Federal A/E project. Firms or branch offices of firms submitting this form should enclose (or already have on file with the appropriate office of the agency) a current (within the past year) and accurate copy of the SF 254 for that office.

The procurement official responsible for each proposed project may request submission of the SF 255, Architect-Engineer and Related Services Questionnaire for Specific Project, in accordance with applicable statutory and military procurement regulations and shall evaluate such submissions as well as related information contained on the Standard Form 254 and any other performance data on file with the agency and shall select firms for subsequent discussions leading to contract award in conformance with Public Law 92-582. This form should only be filled by an architect-engineer or related services firm when requested to do so by the agency or by a public announcement. Responses should be as complete and accurate as possible, containing data relative to the specific project for which you wish to be considered, and should be provided by the required due date, to the office specified in the request or public announcement.

This form will be used only for the specified project. Do not refer to this submittal in response to other requests or public announcements.

Definitions:

"Architect-engineer and related services" are those professional services associated with research, development, design and construction, alteration, or repair of real property, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform, including studies, investigations, surveys, evaluations, consultations, planning, programming, conceptual designs, plans and specifications, cost estimates, inspections, shop drawing reviews, sample recommendations, preparation of operating and maintenance manuals, and other related services.

"Principals" are those individuals in a firm who possess legal responsibility for its management. They may be owners, partners, corporate officers, associates, administrators, etc.

"Discipline", as used on this questionnaire, refers to the primary technological capability of individuals in the responding firm. Possession of an academic degree, professional registration, certification or extensive experience in a particular field of practice normally reflects an individual's primary technical discipline.

"Joint Venture", is a collaborative undertaking of two or more firms or individuals for which the participants are both jointly and individually responsible.

"Key Personnel, Specialists, and Individual Consultants", as used in this questionnaire refer to individuals who will have major project responsibility or will provide unusual or unique capabilities for the project under consideration.

Instructions for Filling (Numbers below correspond to numbers contained in form)

1. Give name and location of the project for which this form is being submitted.

2. Provide appropriate data from the Commerce Business Daily (CBD) announcing the particular project for which this form is being filed.

   2a. Give the date of the Commerce Business Daily on which the project announcement appeared, or indicate "not applicable" (N/A) if the source of the announcement is other than the CBD.

   2b. Indicate Agency identification or contract number as provided in the CBD announcement.

3. Show name and address of the individual or firm (or joint venture) which is submitting this form for the project.

   3a. List the name, title, and telephone number of that principal who will serve as the point of contact. Such an individual must be empowered to speak for the firm on policy and contractual matters and should be familiar with the programs and procedures of the agency to which this form is directed.

   3b. Give the address of the specific office which will have responsibility for performing the announced work.

4. Insert the number of personnel by discipline presently employed (on date of this form) at office specified in block 3b. While some personnel may be qualified in several disciplines, each person should be counted only once in accord with his or her primary function. Include clerical personnel, administrative, etc. Write in any additional disciplines, technologists, technicians, etc., and number of people in each in blank spaces.

5. Answer only if this form is being submitted by a joint venture of two or more participating firms. Show the names and addresses of all individuals or organizations expected to be included as part of the joint venture and describe their particular areas of anticipated responsibility (i.e., technical disciplines, administration, financial, technological, environmental, etc.).

   5a. Indicate by checking the appropriate box whether this particular joint venture has worked together on other projects.

STANDARD FORM (SF) 255

Architect-Engineer and Related Services Questionnaire for Specific Project

Standard Form 255
General Services Administration,
Washington, D.C. 20405
Fed. Proc. Reg. (41 CFR) 1-16.603
Armed Svc. Proc. Reg. 18-403

OMB Approval No. 3090-0029

STANDARD FORM (SF) 255
Architect-Engineer and Related Services for Specific Project

1. Project Name / Location for which Firm is Filing

2a. Commerce Business Daily Announcement Date, if any

2b. Agency Identification Number, if any

3. Firm (or Joint Venture) Name & Address

3a. Name, Title & Telephone Number of Principal to Contact

3b. Address of office to perform work, if different from Item 3

4. Personnel by Disciplines (List each person only once, by primary function.)

___ Administrative	___ Electrical Engineers	___ Oceanographers
___ Architects	___ Estimators	___ Planners, Urban/Regional
___ Chemical Engineers	___ Geologists	___ Sanitary Engineers
___ Civil Engineers	___ Hydrologists	___ Soils Engineers
___ Construction Inspectors	___ Interior Designers	___ Specification Writers
___ Draftsmen	___ Landscape Architects	___ Structural Engineers
___ Ecologists	___ Mechanical Engineers	___ Surveyors
___ Economists	___ Mining Engineers	___ Transportation Engineers

___ Total Personnel

5. If submitted as by JOINT VENTURE list participating firms and define specific areas of responsibility (including administrative, technical and financial) for each firm. (Attach SF 254 for each if not on file with Procuring Office.)

5a. Has this Joint Venture previously worked together? ☐ yes ☐ no

6. If respondent is not a joint venture, list outside key Consultants/Associates anticipated for the project (Attach SF 254 for Consultants/Associates listed, if not already on file with the Contracting Office)

Name & Address	Specialty	Worked with Prime before (Yes or No)
a.		
b.		
c.		
d.		
e.		
f.		
g.		
h.		

7 Brief resume of key persons, specialists, and individual consultants anticipated for the project.

a Name & Title	a Name & Title
b Project Assignment	b Project Assignment
c Name of Firm with which associated	c Name of Firm with which associated
d Years experience With This Firm ... With Other Firms ...	d Years experience With This Firm ... With Other Firms ...
e Education Degree(s) / Year / Specialization	e Education Degree(s) / Years / Specialization
f Active Registration Year First Registered/Discipline	f Active Registration Year First Registered/Discipline
g Other Experience and Qualifications relevant to the proposed project	g Other Experience and Qualifications relevant to the proposed project

$

7. Brief resume of key persons, specialties, and individual consultants anticipated for this project.

a. Name & Title	a. Name & Title
b. Project Assignment	b. Project Assignment
c. Name of Firm with which associated	c. Name of Firm with which associated
d. Years experience With This Firm ..... With Other Firms	d. Years experience With This Firm With Other Firms
e. Education Degree(s) / Year / Specialization	e. Education Degree(s) / Years / Specialization
f. Active Registration Year First Registered/Discipline	f. Active Registration Year First Registered/Discipline
g. Other Experience and Qualifications relevant to the proposed project	g. Other Experience and Qualifications relevant to the proposed project

6

53-98

7 Brief resume of key persons, specialists, and individual consultants anticipated for the project

a Name & Title	a Name & Title
b Project Assignment	b Project Assignment
c Name of Firm with which associated	c Name of Firm with which associated
d Years experience With This Firm With Other Firms	d Years experience With This Firm With Other Firms
e Education Degree(s) / Year / Specialization	e Education Degree(s) / Years / Specialization
f Active Registration Year First Registered/Discipline	f Active Registration Year First Registered/Discipline
g Other Experience and Qualifications relevant to the proposed project	g Other Experience and Qualifications relevant to the proposed project

7

7. Brief resume of key persons, specialists, and individual consultants anticipated for this project.	
a. Name & Title	a. Name & Title
b. Project Assignment	b. Project Assignment
c. Name of Firm with which associated	c. Name of Firm with which associated
d. Years experience: With This Firm ... With Other Firms	d. Years experience: With This Firm ... With Other Firms
e. Education: Degree(s) / Year / Specialization	e. Education: Degree(s) / Years / Specialization
f. Active Registration: Year First Registered/Discipline	f. Active Registration: Year First Registered/Discipline
g. Other Experience and Qualifications relevant to the proposed project:	g. Other Experience and Qualifications relevant to the proposed project:
8.	

8. Work by firm or joint-venture members which best illustrates current qualifications relevant to the project (list not more than 10 projects).

a. Project Name & Location	b. Nature of Firm's Responsibility	c. Project Owner's Name & Address	d. Completion Date (actual or estimated)	e. Estimated Cost (in thousands)	
				Entire Project	Work for which Firm was/is responsible
(1)					
(2)					
(3)					
(4)					
(5)					
(6)					
(7)					
(8)					
(9)					
(10)					

STANDARD FORM 255 (Rev. 10-83)

9. All work by firms or joint-venture members currently being performed directly for Federal agencies.

a. Project Name & Location	b. Nature of Firm's Responsibility	c. Agency (Responsible Office) Name & Address	d. Percent complete	e. Estimated Cost (in Thousands)	
				Entire Project	Work for which firm is responsible

10

10. Use this space to provide any additional information or description of resources (including any computer design capabilities) supporting your firm's qualifications for the proposed project.

11. The foregoing is a statement of facts.

Signature ..... Typed Name and Title ..... Date .....

11

Question: Please provide a breakout of 8(a) awards by category (i.e. Black, Hispanic, Asian, Women, etc.) for construction and A/E services.

Answer: The Federal Data Procurement System does not breakdown Section 8(a) by the above categories.

Question: Describe the procedure under which small and disadvantaged businesses obtain eligibility under the Small Business Administration's 8(a) set-aside program.

Answer: SBA should respond to this question.

Question: How long do you anticipate it will be before the recently announced size standard change for A/E firms can be implemented?

Answer: The proposed size standard was recently published for a 60 day public comment period in the Federal Register. Thereafter, SBA will take the action necessary to publish a new size standard. It is presumed this should be accomplished within the next three to four months.

Question: What impact do you think the change in size standard will have on the A/E community as far as competing for Department of Defense contracts?

Answer: There will be a larger number of procurements on which the large A/E firms will be able to submit offers.

Question: The testimony that follows was received from another witness at the hearing. Would you please comment on the claim of government savings if the set-aside program were eliminated?

"Set-Asides Cost the Taxpayer"

"It is admittedly difficult to place a dollar amount on the cost to the government of using small business set-asides; however, a good indication of the cost can be extrapolated from a 1976 Report of Consultants to the Army Corps of Engineers on small business set-asides in the dredging industry. The report found that '... low bids received under restricted advertisements were 9 percent lower than those received under set-asides'. The Associated General Contractors (AGC) has projected this 9 percent figure to the total value of DoD construction contracts set-aside in FY 1984, of just under $4 billion. AGC estimates that the set-aside program cost DoD $356 million in restricted competition costs for that year alone."

Answer: The Department of Defense questions whether there would be any savings particularly in the long run if the set-aside program were eliminated. We believe that set-asides encourage rather than inhibit competition. The reason is that when a procurement is set-aside, the procurement cannot, by definition, be a sole source award. Secondly, the small business firms know they will be competing with their peers and have a reasonable chance of being the successful bidder; therefore, many more small businesses participate in the procurement than if it were not set-aside.

We are not knowledgeable of the methodology that the consultants used in their study; therefore, we cannot comment on its validity or accuracy. However, we certainly question whether any analysis of a small segment of the construction industry such as dredging can be generalized to alleged potential savings for the entire costruction procurement program.

Questions for DOD Representatives

Question: Questions for DoD procurement representative: What are some of the obstacles to Defense Department contracting with qualified minority construction enterprises?

Answer: We do not know of any obstacles to our contracting with qualified minority construction firms, other than the influences of the competitive marketplace faced by any firm competing for work. This might include bonding capacity, or competitive pricing ability.

Question: What are the strengths and weaknesses of the Small Business Administration in preparing Hispanic businesses to successfully contract with the Defense Department? Do you find that Hispanic businesses are usually knowledgeable on how to prepare bids for contracts?

Answer: We believe that the Small Business Administration should respond to these questions.

Question: Could you tell me what was the Hispanic participation rate in Military Construction Programs in Fiscal 1984? (Probably will have no answer). How can we get more accurate data on the share of Hispanics in military construction?

Answer: The DoD does not collect procurement award information based on ethnicity and could not do so without a radical change to the entire Federal Data Procurement Reporting System. This is not likely given the costs and administrative burdens. The SBA may be able to provide some information on how many Section 8(a) awards were made to Hispanic contractors.

Question: By how much could the Defense Department increase the minority share of the militry construction program over last year in a concerted effort?

Answer: It is difficult to provide a precise answer because it is not known at this time which construction projects the Congress will approve and how much money will be first, authorized and secondly, appropriated. In any case, we have every reason to believe, based on historical growth, that we will increase our awards to small disadvantaged contractors next year.

Question: Statistics show that the bulk of Federal contracting with Hispanic firms go through the 8(a) program. How is the Defense Department performing outside the 8(a) process in military construction? What specific steps are being taken by the Defense Department to reach Hispanic and other minority non-8(a) firms?

Answer: During FY 1984, minority owned firms won 1,697 awards valued at $352.1 million. The Department of Defense, outside of the 8(a) program, has participated actively in the Southwest Border Initiative to attract and solicit Hispanic firms to participate in our procurement requirements. Additionally, there are ongoing efforts to identify firms and encourage and instruct them on how to participate targeted to geographic locations where there are high concentrations of Hispanic and other non-8(a) firms. This is a part of our overall outreach program.

Question: How have minority and Hispanic construction firms fared under the Public Law 95-507 Subcontracting Program for Construction Contracts of $1 million or more? (Probably no answer). Have contracting officers aggressively pursued minority subcontracting? What is the minority subcontracting record for the top 20 prime construction contractors? How can minority subcontracting opportunities be improved?

Answer: The Federal Standard Form 295 "Summary Subcontract Report" does not breakdown the small and disadvantaged (minority) business awards based on ethnic groups. Our small and disadvantaged business specialists do pursue aggressively our prime contractors to improve their performance of subcontracting with minority firms. This is evidenced by the fact that our primes increased their overall minority subcontract awards from $452 million in FY 1980 to approximately $812 million in FY 1985 for a 79.7 percent increase. See attached for top 20 construction contractors.

Minority subcontracting opportunities can be improved by the availability of a greater number of capable minority firms becoming known to our prime contractors.

Corps of Engineers ($ in thousands)

Contractor	Total SC Awds	SB Awds	%	SDB Awds	%
Actus Corp	$ 4,789	$ 3,473	72.5	$ 480	10.0
Brinderson Corp	17,268	7,182	41.6	354	2.1
Doster Const Co	10,824	5,857	54.1	163	1.5
Granite Const Co	3,182	2,971	93.4	606	19.1
Hensel Phelps Co	12,815	5,459	42.6	546	4.3
Iber & Sons, Inc	9,358	6,668	71.3	240	2.6
Jones Const Co	6,164	3,009	48.8	90	0.2
Kiewit Const Co	18,872	6,694	35.5	270	0.2
Metric Const Co	19,000	18,200	95.8	2,550	13.4
Orvco Inc	16,416	8,997	54.8	1,405	8.6
Overton Const Co	55,223	11,023	20.0	80	0.1
Pizzagalli Const Co	4,510	3,023	67.0	132	2.9
Starstone Const Co	5,862	5,351	91.3	2,675	45.6
Williams Bros Co	171,684	146,138	85.1	0	0.0

Naval Facilities Engineering Command

Contractor	Total SC Awds	SB Awds	%	SDB Awds	%
Blake Const Co	$96,495	$23,349	24.2	$2,681	3.0
Castle Const Co	8,494	5,902	69.5	0	0.0
Norfolk Const Co	9,436	7,457	79.0	792	8.4
Raymond Brown Co	26,379	5,135	19.5	135	0.5
Tyger Const Co	5,977	3,152	52.7	323	5.4
Weyher Livsey Co	3,755	2,399	63.9	204	5.4

Question: How does each Service allocate minority construction set-asides? Does each Service meet its allocated goal? (If yes) Could they increase those goals and by how much? (If no) Why?

Answer: The Deputy Secretary of Defense assigns the annual small business and small disadvantaged business goals to the Secretaries of the Military Departments and Directors of Defense Agencies. There are five goals: small business prime contracts; small business set-asides; small business research and development; small business subcontracts; small disadvantaged business goals (comprised of minority direct, subcontract and Section 8(a) awards) and women-owned small business awards. Goals are not identified by specific Standard Industrial Codes (SIC) such as construction. However, goals are disseminated to each major buying activity. Accordingly, each construction buying activity does receive annual goals in the above mentioned categories.

Most Services meet their assigned goals. Wherever goals are not met, the particular Secretary or Director must provide an explanation to the Secretary of Defense.

The level at which goals are established is a function of a negotiation process between the DoD and SBA as required by Public Law 95-507. Many factors are considered which have a bearing whether a particular goal will be higher or lower than the previous year. Some factors are the degree of small and disadvantaged business participation over the past three years, the level of expected spending by procurement claimant category, the establishment of program support initiatives and the availability of small and disadvantaged business firms to respond to DoD requirements for goods and services.

SMALL BUSINESS ADMINISTRATION

Question. Are the Brooks Law Architect-Engineer Selection Procedures in conflict with the new "push" towards "full and open competition" as expressed in the Competition in Contracting Act of 1984?

Answer. While the Brooks Law Architect-Engineer Selection Procedures are unique, they are not in conflict with the Competition in Contracting Act of 1984. Contracting officers are required to publicly announce all requirements for architect-engineering services and negotiate contracts for these services, based on the demonstrated competence and qualifications of prospective contractors to perform the services required at fair and reasonable prices. There exists published procedures for all interested firms to submit their qualifications for review. Once accepted, they are eligible for consideration on individual requirements.

Question. Recently SBA published a rulemaking proposal advancing a $1.5 million small business size standard for architectural and engineering services. We understand this is the fifth such rulemaking proposal affecting the A/E industry since 1980. Is SBA confident that it has now effectively addressed the issue of the A/E size standard?

Answer. This is the fourth rulemaking proposal since the beginning of 1980 affecting the construction-related engineering and architectural services. Comments to the previous three notices indicate that the current size standard of $7.5 million is too high. Analysis of the industry structure as well as data on Federal procurements of these services also indicates the size standard is too high. However, those advocating the standard be lowered are in disagreement as to what it should be lowered to. At the proposed size standard of $1.5 million, it appears that a reasonable amount of contracts will go to small business. Additionally, set-asides can be targeted to those firms which we believe are more in need of Federal program assistance and large enough to perform effectively and economically on the Government's engineering and architectural requirements. We will closely study all comments from the public and from Federal agencies to determine if $1.5 million is the appropriate size standard.

Question. Provide for the record copies of Form 254 and 255 as well as a "10 sheet" used for submission by A/E's.

Answer. Should be answered by DOD.

Question. Please provide a breakout of 8(a) awards by category (i.e. Black, Hispanic, Asian, Women, etc.) for construction and A/E. services.

Answer. Printouts attached.

8(A) CONSTRUCTION STATISTICS EXCLUDING WOMEN

	Black		Puerto Rican		American Indian		Spanish speaking	
	Net amount	Number	Net amount	Number	Net amount	Number	Net amount	Number
Fiscal year:								
1978	110,687,107	799	2,157,617	30	9,954,759	76	26,180,756	229
1979	151,782,468	889	2,581,384	30	13,883,201	102	52,362,794	311
1980	313,285,476	1,083	5,618,191	43	33,376,945	182	81,884,452	473
1981	295,482,906	1,161	7,430,423	33	41,234,139	180	112,281,658	475
1982	344,354,218	1,019	1,994,829	22	39,963,569	169	109,970,183	474
1983	328,390,555	1,198	9,250,498	28	50,580,099	203	161,362,244	580
1984	393,114,759	1,131	6,767,991	37	72,133,919	240	172,566,466	576
1985	314,565,378	885	6,038,727	37	73,193,258	186	184,030,482	576
Total	2,251,662,870	8,165	41,839,663	260	334,319,892	1,338	900,643,038	3,694

	Asian		Eskimo/Aleut		Undetermined		Other	
	Net amount	Number	Net amount	Number	Net amount	Number	Net amount	Number
Fiscal year:								
1978	11,653,002	119	1,320,489	2	0	0	1,820,333	27
1979	21,271,287	131	1,348,086	2	0	0	2,603,819	24
1980	32,654,654	154	420,472	2	105,049	2	2,582,352	30
1981	46,090,442	177	1,109,415	3	442,385	2	3,730,144	40

	Asian		Eskimo/Aleut		Undetermined		Other	
	Net amount	Number	Net amount	Number	Net amount	Number	Net amount	Number
1982	32,335,189	163	632,757	3	533,689	9	7,876,787	36
1983	35,152,818	167	3,904,157	3	281,186	4	5,951,717	32
1984	36,845,455	145	271,646	2	75,095	3	9,855,685	46
1985	29,521,515	142	167,928	2	1,073,180	4	4,792,459	36
Total	245,524,376	1,198	9,174,951	19	2,510,586	24	39,213,298	271

FISCAL YEAR TOTALS

	Total amount	Number
Fiscal year:		
1978	163,774,065.35	98
1979	245,833,041.05	305
1980	469,931,594.52	785
1981	507,801,524.71	887
1982	537,661,225.14	711
1983	594,873,278.37	1,031
1984	691,631,017.75	996
1985	613,382,931.56	684
Total all	3,824,888,678.45	5,497

8(A) CONSTRUCTION STATISTICS FOR WOMEN

	Black		Puerto Rican		American Indian		Spanish speaking	
	Net amount	Number	Net amount	Number	Net amount	Number	Net amount	Number
Fiscal year:								
1978	6,403,274	4	65,000	0	675,168	4	1,113,008	3
1979	12,078,348	4	0	0	666,851	5	2,939,444	9
1980	6,528,109	12	9,000	0	780,264	5	842,224	7
1981	5,642,056	9	0	0	4,163,711	10	27,601,399	18
1982	9,297,031	6	0	0	3,417,236	8	4,626,566	16
1983	34,484,997	13	127,755	0	2,912,491	8	7,393,778	9
1984	3,168,663	11	269,231	0	6,544,383	14	7,093,834	12
1985	1,893,856	21	0	0	12,121,260	16	11,717,696	20
Total	79,496,338	80	452,986	0	31,281,367	70	63,327,951	94

	Asian		Eskimo/Aleut		Undetermined		Other	
	Net amount	Number	Net amount	Number	Net amount	Number	Net amount	Number
Fiscal year:								
1978	8,866	4	0	0	0	0	1,484,943	0
1979	578,102	4	0	0	0	0	1,600,676	0
1980	1,654,721	15	0	0	0	0	1,899,497	0
1981	2,374,677	8	0	0	0	0	867,566	3
1982	2,410,462	8	0	0	0	0	5,639,450	7
1983	6,670,339	6	0	0	0	0	2,740,693	5
1984	3,767,053	2	0	0	0	0	4,822,581	13
1985	982,720	4	0	0	0	0	1,416,399	10
Total	18,446,944	51	0	0	0	0	20,471,808	38

FISCAL YEAR TOTALS FOR WOMEN

	Total amount	Number
Fiscal year:		
1978	9,750,259.52	15
1979	17,863,422.56	22
1980	11,695,817.68	39
1981	40,649,412.46	48
1982	25,390,747.62	45
1983	54,330,056.13	41
1984	25,665,747.98	52
1985	28,131,933.75	71
Total	213,477,397.70	333

8(A) STATISTICS SIC 8911 "A&E" EXCLUSIVE OF WOMEN

	Black		Puerto Rican		American Indian		Spanish Speaking	
	Net amount	Number	Net amount	Number	Net amount	Number	Net amount	Number
Fiscal year:								
1978	5,475,548	35	69,216	2	0	0	2,353,700	14
1979	6,055,666	65	59,621	3	462,154	2	1,264,201	25
1980	7,151,696	84	0	0	13,167	3	1,868,352	20
1981	8,254,252	61	0	0	110,639	2	5,798,451	35
1982	8,136,788	72	3,300	1	276,195	2	1,591,152	34
1983	14,183,204	85	3,400	1	35,174	1	3,493,284	35
1984	35,076,430	125	0	0	4,348,154	9	15,704,495	39
1985	131,316,075	176	533,139	2	6,137,863	20	40,008,599	69
Total	215,649,661	703	668,676	9	11,383,347	39	72,082,235	271

	Asian		Eskimo/Aleut		Undetermined		Other	
	Net amount	Number	Net amount	Number	Net amount	Number	Net amount	Number
Fiscal year:								
1978	1,643,439	18	594,184	10	0	0	0	0
1979	4,676,932	46	715,328	9	0	0	0	0
1980	9,039,633	78	442,180	6	0	0	0	0
1981	9,664,242	55	398,680	4	0	0	273,721	4
1982	7,673,431	42	267,153	5	0	0	56,000	1
1983	11,860,967	67	0	0	259,303	1	371,612	4
1984	25,842,585	76	0	0	1,604,192	2	1,214,864	5
1985	24,468,093	102	109,027	2	347,639	5	1,474,695	7
Total	94,869,325	484	2,526,552	36	2,211,134	8	3,391,892	21

FISCAL YEAR TOTALS SIC 8911

	Total amount	Number
Fiscal year:		
1978	10,136,087.00	79
1979	13,233,902.00	150
1980	18,515,028.94	191
1981	24,499,986.20	161
1982	18,004,021.00	157
1983	30,206,945.66	194

FISCAL YEAR TOTALS SIC 8911—Continued

	Total amount	Number
1984	83,790,722.54	256
1985	204,396,131.28	383
Total all	402,782,824.62	1,571

8(A) STATISTICS 8911 WOMENS "A & E"

	Black		Puerto Rican		American Indian		Spanish speaking	
	Net amount	Number	Net amount	Number	Net amount	Number	Net amount	Number
Fiscal year:								
1978	2,163,756	0	65,000	0	99,600	0	521,996	0
1979	11,892,867	0	0	0	323,183	0	1,563,038	0
1980	4,337,211	0	9,000	0	9,117	0	418,036	0
1981	4,074,056	0	0	0	3,082,348	0	24,937,020	0
1982	6,442,453	1	0	0	2,126,349	0	1,235,057	0
1983	25,352,688	3	127,755	0	19,599	0	1,825,579	0
1984	2,584,717	1	269,231	0	3,293,886	0	1,159,090	0
1985	1,476,191	8	0	0	1,728,627	1	7,584,897	1
Total	58,323,942	13	452,986	0	10,682,711	1	38,408,645	1

	Asian		Eskimo/Aluet		Undetermined		Other	
	Net amount	Number	Net amount	Number	Net amount	Number	Net amount	Number
Fiscal year:								
1978	219,847	0	0	0	0	0	1,484,943	0
1979	67,153	0	0	0	0	0	1,600,676	0
1980	175,960	1	0	0	0	0	1,899,497	0
1981	2,108,194	1	0	0	0	0	693,816	0
1982	1,599,132	0	0	0	0	0	604,308	0
1983	6,192,867	0	0	0	0	0	972,764	0
1984	2,343,415	0	0	0	0	0	3,234,373	1
1985	5,486,981	3	109,027	2	0	0	981,043	3
Total	17,401,937	5	109,027	2	0	0	11,471,423	4

FISCAL YEAR TOTALS 8911 WOMEN

	Total amount	Number
Fiscal year:		
1978	4,115,448.52	0
1979	15,446,918.42	0
1980	5,642,831.26	1
1981	34,895,436.72	1
1982	12,007,301.99	1
1983	34,491,254.50	3
1984	12,884,714.29	2
1985	17,366,768.74	18
Total all	136,850,674.44	26

Question. Describe the procedure under which small and disadvantaged businesses obtain eligibility under the Small Business Administration's 8(a) set-aside program.

Answer. A fact sheet describng 8(a) eligibility procedures is attached.

FACT SHEET DESCRIBING 8(a) ELIGIBILITY PROCEDURES

VI. APPLICATION PROCEDURES

1. Stage I

(a) National Buy: The AA/MSB&COD or designee is responsible for determining if there is a reasonable likelihood of availability of national buy requirements necessary to support the concern.

(b) Nonavailability of Requirement Support. When requirement support is not available, the region will inform the inquirer in writing that no further action can be taken on his expressed interest in the program due to lack of availability of requirements support. A copy of the letter shall be forwarded to the district.

(c) Availability of Requirements Support: If the necessary SBA requirements support is determined to be available, the inquirer may proceed to Stage II of the application process and may submit necessary application forms as an applicant for 8(a) program assistance.

2. Stage II

(a) When requirement support has been determined to be available the applicant will be requested to submit a full complete application package consisting of Forms 1010A—Personal Eligibility Statement, 1010B—Business Eligibility Statement, and 1010C, D, E or I, "Business Plan."

(b) The District Office processes the application, makes a recommendation of approval or decline and forwards it to the Regional Office for concurrence.

(c) The Regional Office reviews the application, appends comments and a recommendation and forwards it to the AA/MSB&COD.

(d) The decision of eligibility shall be that of the AA/MSB&COD. He will notify the applicant in writing of the final decision and forward a copy of the letter to the region and district office.

Question. How long do you anticipate it will be before the recently announced size standard change for A/E firms can be implemented?

Answer. Should the SBA decide, based on an analysis of the comments from the private sector and Federal agencies, that the $1.5 million proposed size standard is appropriate, a revised size standard could take effect in March or April of 1986. This allows for analysis of comments, Agency and the Office of Management and Budget clearance, and a 30-day period after publication in the Federal Register for the Final Rule to take effect.

Question. What impact do you think the change in size standard will have on the A/E community as far as competing for Department of Defense contracts?

Answered.

Should be responded to by DOD.

Question. The testimony that follows was received from another witness at the hearing. Would you please comment on the claim of government savings if the set-aside program were eliminated?

Answer. Should be responded to by DOD.

QUESTIONS SUBMITTED BY HON. ALBERT G. BUSTAMANTE

Question. In the upcoming year, what should the SBA's goal in expanding the number of Hispanic construction firms in the 8(a)?

Answer. This depends on many factors over which we have limited control, such as the volume of qualified applicants, the availability of contract support for the existing 8(a) portfolio, and to some extend, the availability of sufficient resources to apply to providing continued high quality business development assistance. However, in general, our goal (and this is a multi-year initiative) is to guide the mix of the 8(a) portfolio (in both ethnic and business class terms) to a level which, as closely as possible, matches the mix in the minority business universe in the United States.

Question. How many 8(a) Hispanic construction firms in the SBA's portfolio currently have government contracts? Is it clear to the firms without contracts, what is expected of them and what they should expect from the SBA to obtain an 8(a) contract? Why aren't they getting contracts?

Answer. Of the 279 Hispanic 8(a) construction firms in the 8(a) portfolio (as of 8/31/85), 250 (90%) have active 8(a) contracts. This is a remarkable achievement. It

should be clear to the firms without contracts of what is expected in order to obtain an 8(a) contracts. We can only speculate as to why they aren't getting contracts. There are several possibilities, including: the fact that several of these companies only recently entered the program and have not had the time yet to get an 8(a) contract; some may not be capable of performing on or financing the kinds of requirements currently available; and not the least of all (and this is an area we provide assistance in), some companies may not be marketing effectively and/or aggressively enough for available requirements.

Question. When the SBA determines DOD-wide minority contracting and subcontracting goals, what are your assumptions regarding military construction?

Answer. We make no such assumptions.

Question. Have Hispanic construction firms benefited significantly from the P.L. 95–507 subcontracting program? How many Hispanic firms subcontracted under the program last fiscal year? How could we get this information in order to evaluate the effectiveness of this program in helping Hispanic businesses?

Answer. See answer to question number 5.

Question. How well have the largest 20 military construction contractors complied with the minority subcontracting program? Could you provide us the percentages and amounts of Hispanic and minority subcontracting for each of the major contractors?

Answer. Since the enactment of P.L. 95–507, small disadvantaged business firms have benefited significantly from the 8(d) subcontracting program. Unfortunately, specific subcontracting figures and percentages pertaining to individual ethnic groupings are not categorized. Nor is the separate subcontracting field of construction specifically categorized.

However, in an effort to accommodate your needs as much as possible, we do submit the following subcontracting figures for FY 1984:

Total Government-wide Subcontracting Amount to Small Businesses	$37,900,000,000
Total Government-wide Subcontracting Amount to Small Disadvantaged Businesses	$1,215,509,600
Percentage of Small Business Subcontracting Awarded to Small Disadvantaged Businesses	5.5

Mr. DELLUMS. Thank you very much. You have been very patient and you have certainly helped us make a record in this respect, and the subcommittee will stand in recess until 2 p.m. this afternoon, when we will recovene the subcommittee.

[Whereupon, at 12:30 p.m., the subcommittee was recessed, to reconvene at 2 p.m. the afternoon of the same day.]

AFTERNOON SESSION

Mr. DELLUMS. The subcommittee will resume its business.

We will begin this afternoon's portion of these proceedings with a panel consisting first of Mr. Robert Whiteside, chairperson, Committee on Federal Procurement of Architectural-Engineering Services, Columbia, SC, accompanied by Mr. Gregg of Virginia and Mr. Lawson of Wisconsin.

We also have with us, Mr. Marshall Purnell, president of the National Organization of Minority Architects, Washington, DC.

The Chair would like to welcome all you gentlemen before the subcommittee. We do have your prepared remarks, which have been submitted prior to these proceedings, and without objection, they will appear at the appropriate point in the record, and we will begin with Mr. Whiteside.

STATEMENT OF ROBERT E. WHITESIDE, CHAIRMAN, COMMITTEE ON FEDERAL, PROCUREMENT OF ARCHITECTURAL-ENGINEERING SERVICES COLUMBIA, SC

Mr. WHITESIDE. Thank you, sir.

My name is Robert E. Whiteside, I am a practicing engineer from Columbia, SC, and chairman of the Committee on Federal Procurement of Architectural-Engineering Services. On my left is Mr. Porcher Gregg, a land surveyor from Norfolk, VA, and on my right is David Lawson, a practicing architect from Madison, WI.

Sir, I would like to summarize my comments, if appropriate.

Mr. DELLUMS. Yes, the Chair has already sought permission to put the full text of your statement in the record, and you may proceed in any fashion you choose.

Mr. WHITESIDE. Thank you.

The Committee on Federal Procurement of Architectural-Engineering Services represents the vast majority of America's practicing architects, engineers and surveyors.

The purpose of COFPAES is to promote sound Federal procurement practices governing architect, engineer, and surveying services.

When the Department of Defense requires A&E services, it utilizes a process mandated by the so-called Brooks Act, Public Law 92-582. This law, enacted in 1972, was designed to open up Federal contracts opportunities, particularly to those firms that did not have Washington offices and, therefore, an inside track.

It sets forth Government-wide policy promoting competition among all interested firms and assures that the Government obtains the services of highly qualified A&E's at fair and reasonable prices.

From our perspective, the Brooks Act process works well. We compete for Federal work on the basis of our qualifications and abilities, just like we do for State jobs—most States have Brooks-type laws, or in the private sector.

One policy that has raised the ire of many practitioners interested in Government work is the so-called rule of two, small business set-aside policy followed for some years by the DOD.

To understand our concern, you should know that most architect, engineer, or surveying firms are classified as small business according to SBA rules.

Presently, 98 percent of the roughly 15,000 engineering firms are below the $7.5 million size standard. Stated another way, there are only about 250 firms not considered to be small business engineering firms.

There are even fewer architectural or surveying firms not classified as small business.

Under the rule of two requirement specified by the Federal Acquisition Regulations, A&E contracts must be set aside if the agency expects two or more small business firms to compete. The net result is that virtually all A&E contracts were set aside with some of the largest and most capable firms excluded from DOD work.

At least this was the situation until 2 years ago, when Congress enacted the so-called $85,000 cap.

Under the $85,000 cap approach, contracts below $85,000 are the exclusive province of small business. We supported this approach because it seemed to us that in this way, a fair proportion of DOD contracts were earmarked for small business without closing the door to DOD work for other interested firms.

The number of contracts and dollar value of awards to small firms went up with the cap in effect.

We would be remiss if we did not observe that the Small Business Administration has recently proposed lowering the size standard for the A&E professions to a $1.5 million in average annual receipts test.

We applaud SBA's proposal even though under this drastically reduced standard, roughly 90 percent of the A&E firms will be classified as small business, as opposed to about 98 percent today.

Mr. DELLUMS. Would you repeat that assertion again?

Mr. WHITESIDE. Yes, sir.

We applaud SBA's proposal even though under this drastically reduced standard, roughly 90 percent of the A&E firms will be classified as small business, as opposed to about 98 percent today.

It is a step in the right direction. A better move would be to eliminate our professions from set-aside programs altogether; or, at the very least, abolish the "rule of two". We are perfectly capable of competing head-to-head without special consideration.

The nature of our practice is such that the size of job often dictates the size of firm with small jobs going to small firms and large jobs to the province of large firms.

Recently, Congressman Bedell proposed two amendments to the Military Construction Authorization bill, H.R. 1409. Since this legislation falls within the jurisdiction of this subcommittee, and may soon be considered by the House, we thought it would be appropriate to comment on Mr. Bedell's proposals.

His first amendment, as explained by Mr. Bedell in a July 30, 1985 Dear Colleague letter, "will repeal an arbitrary restriction on the small business set-aside program." According to Mr. Bedell, the $85,000 cap "has already cut in half the value of these contracts set aside for competition among small business."

As we noted earlier in our statement, the number and value of awards to small business A&E firms for construction projects has increased, fiscal year 1983 versus fiscal year 1984, since the $85,000 cap has been in effect. And this occurred in open competition.

Mr. Bedell is correct in observing that set-aside contract dollars are lower. But if the total number of contracts and dollar value of contracts awarded to small business firms is up, where is the beef?

To us, it seems especially laudable that this result occurred in an open competitive environment. Furthermore, if you examine total DOD A&E awards, not just those related to construction, over the last 5 fiscal years, it is apparent that the percent of small business awards and dollar value is fairly constant with or without the threshold.

Mr. Bedell's second amendment proposes a "demonstration program" to test a selection process that would involve solicitation of "cost proposals" and "design proposals" from prequalified competing firms.

We question whether it is useful to tamper with a process that has produced billions of dollars of construction on time and within budget, especially when the A&E procurement process is working well in the eyes of Government officials, the design professionals and the construction contractors who execute the A&E's designs, plans and specifications.

It is important to remember that the A&E portion of a project represents only one-half of 1 percent of construction and life cycle costs.

Yet, these very construction, maintenance and operation costs depend upon how well the A&E performs. Doesn't it make sense to select highly-qualified A&E's as the Brooks Act requires? We think so.

As to the utility of a price test, we note that the State of Maryland experimented for 10 years with a process similar to what Mr. Bedell advocates. This year, the Maryland Legislature repealed the process on the grounds that it was too expensive and time-consuming.

In its place, Maryland adopted a process virtually identical to the Brooks procedure for all major State projects.

Furthermore, Mr. Bedell's suggestion that Government agencies should consider "the technical merit of design proposals" from competing A&E's will severely limit the number of firms competing for Federal work.

A "design proposal" involves a substantial amount of work and cost. GSA estimated that the three firms that competed for the old post office building renovation job on Pennsylvania Avenue spent in excess of $30,000 each in developing "design proposals."

Another flaw in Mr. Bedell's test is that the Secretary is to report back to Congress on the "results of the demonstration program" within 1 year. How can there be a meaningful report when the project design may not even be completed?

Certainly, the project will not have been built. Thus, there can be no assessment of construction or life-cycle costs. The report required by Mr. Bedell's amendment certainly cannot present "results of the demonstration program."

Mr. Chairman, thank you for the opportunity to present these views. I would now like to ask my colleagues to supplement my comments and to assist in responding to your questions.

PREPARED STATEMENT OF ROBERT E. WHITESIDE

Mr. Chairman, my name is Robert E. Whiteside. I am a practicing engineer from Columbia, South Carolina and Chairman of the Committee on Federal Procurement of Architectural-Engineering Services (COFPAES). Accompanying me are P. Porcher Gregg, a practicing surveyor from Norfolk, Virginia, and David Lawson, a practicing archetect from Madison, Wisconsin.

The Committee on Federal Procurement of Architectural-Engineering Services represents six architectural, engineering and surveying (A-E) professional societies:

American Congress on Surveying and Mapping,
American Consulting Engineers Council,
American Institute of Architects,
American Society of Civil Engineers,
ARTBA Planning and Design Division, and
National Society of Professional Engineers.

These societies represent the vast majority of America's practicing architects, engineers and surveyors.

The purpose of COFPAES is to promote sound Federal procurement practices governing archietect, engineer and surveying services. We welcome this opportunity to appear before you to discuss DOD A-E procurement requirements, particularly those affecting small business participation.

When the Department of Defense requires A-E services it utilizes a process mandated by the so-called Brooks Act, P.L. 92-582. This law, enacted in 1972, was designed to open up Federal contract opportunities, particularly to those firms that did not have Washington offices and, therefore, an inside track. It sets forth govern-

ment-wide policy promoting competition among all interested firms and assures that the government obtains the services of highly qualified A-Es at fair and reasonable prices. The Brooks Act requires:

(1) Public announcement concerning prospective contracts;

(2) Ranking of competing firms based upon level of qualification, skill and experience;

(3) Negotiation with the firm deemed most qualified to provide the required services; and

(4) If the agency is unable to reach and agreement "fair and reasonable to the government" with the top-ranked firm, negotiations are initiated with the next most qualified firm and so on until a contract is consumated.

Superimposed on the entire process is a free limitation requirement stipulating that A-Es can be paid no more than six (6) percent of estimated construction cost for their design services. And, of course, there are the other boiler-plate provisions concerning truth-in-negotiation, auditing and the like.

From our perspective the Brooks Act process works well. Through the Commerce Business Daily we learn about "live" prospects. We compete for Federal work on the basis of our qualifications and abilities, just like we do for state jobs (most states have Brooks-type laws) or in the private sector. And, except for occasional frustration over certain government policies that impact procurement, we have no complaints about the process per se.

One policy that has raised the ire of many practitioners interested in government work is the so-called "rule of two," small business set-aside policy followed for some years by the DOD. To understand our concern you should know that most architect, engineer or surveying firms are classified as small business according to SBA rules. Presently, 98 percent of the roughly 15,000 engineering firms are below the $7.5 million size standard. Stated another way, there are only about 250 firms not considered to be small business engineering firms. There are even fewer architectural or surveying firms not classified as small business.

Under the "rule of two" requirement specified by the Federal Acquisition Regulations, A-E contracts must be set aside if the agency expects two or more small business firms to compete. The net result is that virtually all A-E contracts were set aside with some of the largest and most capable firms excluded from DOD work and with the truly small firms (5–10 employees) faced with the prospect of competing with firms employing 100–125 employees. At least this was the situation until two years ago when Congress enacted the so-called $85,000 cap, a concept originally proposed by DOD.

Under the $85,000 cap approach, contracts below $85,000 are the exclusive province of small business while contracts above that amount are open to every firm large and small. We supported this approach because it seemed to us that in this way a "fair proportion" of DOD contracts were earmarked for small business without closing the door to DOD work for other interested firms. It is interesting to see what effect the $85,000 cap has had on DOD A-E awards for contruction projects. Here's a recap:

	A–E contracts		Large firms		Small firms		Percent of small firms	
	Actions	Amount	Actions	Amount	Actions	Amount	Actions	Amount
Fiscal year:								
1983	3,994	431,473	518	139,819	3,476	291,654	87.0	67.7
1984	4,327	413,147	542	106,909	3,785	306,238	87.5	74.1

Source: Department of Defense.

Thus, the number of contracts and dollar value of awards to small firms went up with the cap in effect. These data show that small firms can successfully compete in an open market.

We would be remiss if we did not observe that the Small Business Administration has recently proposed lowering the size standard for the A–E professions to a $1.5 million in average annual receipts test. We applaud SBA's proposal even though under this drastically reduced standard roughly 90 percent of the A–E firms will be classified as small business. It is a step in the right direction. A better move would be to eliminate our professions from set-aside programs altogether; or, at the very

least, abolish the "rule of two." We are perfectly capable of competing head-to-head without special consideration. The nature of our practice is such that the size of job often dictates the size of firm with small jobs going to small firms and large jobs to the province of large firms.

Recently, Congressman Bedell (D-Iowa) proposed two amendments to the Military Construction Authorization bill, H.R. 1409. Since this legislation falls within the jurisdiction of this Subcommittee and may soon be considered by the House, we though it would be appropriate to comment on Mr. Bedell's proposals.

His first amendment, as explained by Mr. Bedell in a July 30, 1985 Dear Colleague Letter, ". . . will repeal an arbitrary restriction on the small business set-aside program . . ." According to Mr. Bedell, the $85,000 cap "has already cut in half the value of these contracts set aside for competition among small business."

As we noted earlier in our statement, the number and value of awards to small business A-E firms for construction projects has increased (FY 83 vs. FY 84) since the $85,000 cap has been in effect. And this occurred in open competition. Mr. Bedell is correct in observing that set-aside contract dollars are lower. But if the total number of contracts and dollar value of contracts awarded to small business firms is up, where's the beef? To us it seems especially laudable that this result occurred in an open competitive environment. Furthermore, if you examine total DOD A-E awards (not just those related to construction) over the last five fiscal years, it is apparent that the percent of small business awards and dollar value is fairly constant with or without cap.

Small Business Share of DOD A-E Contracts

	Actions	Amount
Fiscal year:		
1980	72.1	35.2
1981	75.3	38.5
1982	74.6	36.2
1983	72.0	35.0
1984	75.9	33.7

Source: Department of Defense.

We are not wedded to the $85,000 cap. But the program does seem to be working (the Secretary has discretion to adjust the dollar amount) and it should remain in place as long as we have: (1) the vast majority of the A-E professions classified as small business; and (2) the "rule of two" policy.

Mr. Bedell's second amendment proposes a "demonstration program" to test a selection process that would involve solicitation of "cost proposals " and "design proposals" from prequalified competing firms.

We question whether it is useful to tamper with a process that has produced billions of dollars of construction on time and within budget, especially when the A-E procurement process is working well in the eyes of government officials, the design professionals and the construction contractors who execute the A-E's designs, plans and specifications. It is important to remember that the A-E portion of a project represents only 1-2% of construction and life-cycle costs. Yet those very construction, maintenance and operation costs depend upon how well the A-E performs. Doesn't it make sense to select highly qualified A-Es as the Brooks Act requires? We think so.

As to the utility of a price test, we note that the State of Maryland experimented for 10 years with a process similar to what Mr. Bedell advocates. This year the Maryland legislature repealed the process on the grounds that it was too expensive and time consuming. In its place, Maryland adopted a process virtually identical to the Brooks procedure for all major state projects.

Furthermore, Mr. Bedell's suggestion that government agencies should consider "the technical merit of design proposals" from competing A-Es will severely limit the number of firms competing for Federal work. A "design proposal" involves a substantial amount of work and cost. GSA estimated that the three firms that competed for the Old Post Office Building renovation job on Pennsylvania Avenue spent in excess of $30,000 each in developing "design proposals." GSA paid the firms for this work inasmuch as the project was one of unique, national significance. The drafters of the Brooks Act authorized this, but only for projects meeting the nationally significant criteria. Mr. Bedell's plan to require competing firms to prepare

"design proposals" at their expense would drive most firms out of the Federal market.

Another flaw in Mr. Bedell's test is that the Secretary is to report back to Congress on the "results of the demonstration program" within a year. How can there be a meaningful report when the project design may not even be completed? Certainly, the project will not have been built. Thus, there can be no assessment of construction or life-cycle costs. The report required by Mr. Bedell's amendment certainly cannot present "results of the demonstration program."

Mr. Chairman, thank you for the opportunity to present these views. I would now like to ask my colleagues to supplement my comments and to assist in responding to your question.

Mr. DELLUMS. Thank you very much, Mr. Whiteside; and at the appropriate point, we will ask the gentleman to enter into the proceedings. At this time, the Chair would recognize Mr. Purnell, unless either Mr. Gregg or Mr. Lawson has any opening statements they would like to make?

Mr. WHITESIDE. They would like a short statement.

Mr. DELLUMS. I am sorry, Mr. Gregg, would you proceed?

STATEMENT OF P. PORCHER GREGG, NORFOLK, VA

Mr. GREGG. Thank you, Mr. Chairman. I really had not intended to make a statement and came here just to answer questions, but several points were made this morning which I believe must be clarified.

My remarks are based upon 45 years of experience in surveying and engineering, having built a firm up from 50 to 100 people. My firm was a small business, however, by virtue of the acquisition, we are now classified as big business, and I might add that up until the rule, the 1985 cap went on, it was several years before we got any work from DOD.

First, let me amplify how the A&E selection process works. The Government must publicly announce all A&E surveying contract opportunities, firms are evaluated on their competence and qualifications and experience.

A fee and scope of work are negotiated with the top-ranked firm. Price is definitely a factor in the process. It is a factor of both the Government and the A&E and surveyor agree on the scope of the work, so that they will know what the base price discussions on which to base the price discussion; the Government is not obligated to accept the proposal of the A&E or the surveyor.

If the proposed fee is not fair and reasonable to the Government, the negotiations are terminated and the Government negotiates with the next highly qualified firm, and so on.

I have lost jobs because the Government and I could not reach an agreement on the fee. Sometimes it is due to the cost of what the work is and sometimes is due to the definition of the scope.

We may differ on the scope. So, to say that price is not a factor is just not true. In a good professional services procurement, the important thing to remember is the scope of the work must first be defined and the professional competence of the firm determined, otherwise, price considerations are not relevant comparisons.

That is what is wrong with the two-step approach Mr. Bedell suggested this morning. We in surveying have to live with that system in the civilian agencies such as the Forest Service.

I can tell you it does not work despite assurances that price is secondary to qualifications as a selection factor, the lowest bidder seems to always be selected, and the Forest Service is now spending hundreds of thousands of dollars on legal fees because poor surveys have resulted in boundary disputes.

Another point is that market entry under the Brooks approach is not difficult. In the A&E surveying profession, it is rare that a young person gets out of school and hangs out a shingle.

They get experience with an established firm before they go off on their own. And you can take that experience with you and that experience that you may have with another firm is what you submit to the Government to prove that you are experienced and qualified when you decide to go off on your own.

Finally, let me point out that the $1.5 million size standard is not yet in effect. It is only proposed. We have no assurance that it will be adopted. If we simply lower the size standard and do nothing but the rule of two, all you will do will be keep more firms out of the Government market, and I believe all firms should have the opportunity to compete, and until the rule of two is altered, the $85,000 cap is necessary.

Thank you, Mr. Chairman.

Mr. DELLUMS. I thank the gentleman.

Mr. Lawson.

STATEMENT OF DAVID E. LAWSON, MADISON, WI

Mr. LAWSON. Mr. Chairman, my name is David E. Lawson. I am a practicing architect with the Madison, WI, firm of Potter, Lawson, & Pawlowsky, Inc. I am here today representing the American Institute of Architects in my role as a current member of the institute's board of directors and a vice president-elect for 1986.

It is a distinct privilege and honor for me to appear before this subcommittee to discuss the importance of selecting design professionals under the Brooks Act and to ensure full access to the marketplace for all interested firms.

In an effort to conserve the subcommittee's time and to avoid reiterating the points made by other members of this design panel, I would like to relate these issues to the architectural profession.

The issue of set-asides has been a difficult one for the AIA to resolve. We believe set-asides arbitrarily limit the competition of A&E firms in contravention of the Brooks Act, while not truly assisting the development of small firms.

Moreover, the AIA will neither support nor oppose regulations, such as set-asides, which tend to favor one segment of its membership over another.

With respect to the method of setting aside projects for small businesses, the AIA favors the more objective and measurable $85,000 threshold method.

The fact is, small businesses are winning these jobs in open competition under the Brooks Act instead of having them set aside.

The AIA endorses and supports the selection of architects and engineers for Federal, State, and local governmental work after

vigorous and open competition on the basis of professional qualifications and competence.

I would like to comment on the testimony citing a lack of competition under the Brooks Act.

The selection process mandated in the Brooks Act, Public Law 92-582, is fair, competitive, effective, and efficient in the delivery of quality architectural and engineering services to the Federal Government for a fair and reasonable price.

There is widespread support for a selection method utilizing the Brooks Act process as evidenced by the fact that over half the States in the Union use a similar method for procuring A&E services.

Maryland, the one State that required price proposals at the selection stage, recently repealed their law and returned to a more traditional Brooks Act approach.

Mr. Chairman, a test program of selected projects simply will not disclose the fundamental flaws inherent in a price proposal selection method. An extensive study of the recently repealed State of Maryland price selection method, which had been in existence for 10 years, revealed the following:

The Maryland A&E selection method was significantly more time consuming and expensive than a State using the traditional Brooks Act method. The primary reason for this lays in the fact that, under the Maryland approach, the necessity of preparing a detailed preliminary design upon which A&E firms could base their price proposals results in added time delays and cost increases.

The Maryland A&E selection method required a significantly larger administrative staff and budget than a State using the traditional Brooks Act method. Once again, the increased staff and budget resulted from the necessity of preparing detailed preliminary programs in-house upon which the private A&E firms could submit price proposals.

The Maryland experience exhibited an undesirable tendency on the part of A&E firms to stop competing for Government work because it was too expensive for them to create detailed cost proposals and then not win the project.

Moreover, even for those firms winning the job, it was very often cost prohibitive since they had resulted their fees excessively in order to be selected. As a result, architects in Maryland viewed State projects as work of last resort.

After a few years, the Maryland system began to make a larger and larger number of its A&E selections based upon the lowest bid rather than on the highest technical qualifications.

Testimony before the Maryland Legislature revealed that change orders tend to proliferate when low bid designs are awarded the contract which then need improvements or new design features to meet the Government's needs.

As noted, many of the undesirable aspects of using price proposals at the selection stage may, by happenstance, not become apparent during a test which selects a few projects. Nevertheless, the test will be used as evidence to support changing the Brooks Act so that all design work is procured by the price proposal method.

The truth is, without the qualifications-based procurement procedure, public buildings are likely to be more expensive to build, to operate, and to maintain, and their design is far more likely to be unimaginative, uninspired, and inflexible.

The construction industry also recognizes the value in having A&E design selected by qualifications as evidenced by the Associated General Contractors' endorsement of the Brooks Act. Changing the Brooks Act, based upon a selective test, without regard to its 13-year record of success is unwarranted and unjustified.

Mr. Chairman, with your permission and in the interest of time, I would like to submit for the record a memorandum which further elaborates the benefits obtained by the Federal Government in using the current Brooks Act method of selecting design firms and a copy of the study on the Maryland price selection process.

Mr. DELLUMS. Without objection, the documents will appear at this point in the record.

[The following information was received for the record:]

THE AMERICAN INSTITUTE OF ARCHITECTS
TALKING POINTS REGARDING FEDERAL PROCUREMENT OF A/E SERVICES

Introduction

The American Institute of Architects believes strongly that architects and engineers should be selected on basis of professional qualifications and competence. The present law, as prescribed by the Brooks Act (92 P.L. 92-582) (see Attachment 1), provides for vigorous and open competition among A/E firms in the areas of competence, experience, prior performance and technical qualifications.

The Brooks Act has worked well since enactment in 1972 (see Attachment 2), and as a result its method of qualifications-based selection has been adopted by more than half the states. (See Attachment 3).

Under the Brooks Act selection procedure, the federal government has the opportunity to acquire the services of the most qualified A/E firm, while, at the same time, obtaining a price that is "fair and reasonable" to the taxpayers. Any change or modification to the Brooks Act jeopardizes these benefits.

Talking Points Addressing the Issues and Concerns Regarding Qualifications-Based Procurement of A/E Services.

The following talking points address the issues and concerns regarding the benefits of selection under the Brooks Act:

ISSUE:

(1) Federal procurement of other goods and services are obtained on a price competitive-bid basis; however, contracts for architectural services are not procured in such a manner. What makes procuring A/E services so different from that of other goods and services?

TALKING POINTS:

The procurement of A/E services is in fact very different from the procurement of other goods and services for the following reasons:

-- It is impossible to obtain bids for professional services under conditions where the participants are basing their quotations on differing interpretations or evaluations of the scope or range of services to be rendered. Simply stated, the scope of work has not been sufficiently defined so as to provide the basis upon which to make price estimates.

-- Price bidding only works when there is a clearly specified product. However, buildings, bridges and highways are not clearly defined products. Indeed, determining the specifications of these items is one of the primary functions of the architect. Simply stated, the procurement of architectural services is a very specialized type of procurement.

-- The professional problem solving expected of architects requires the exercise of reasoning, judgment and creative thought -- talents that simply cannot be reduced to a dollar and cent price quotation before the full extent of the problem is known.

-- Professional design services involve many intangibles such as technical knowledge, esthetic judgment and decision-making skills that are difficult to compare on an "apples to apples" basis.

-- Public sector building projects involve public health and safety considerations. The agency that builds such a facility is responsible to the taxpayers for obtaining the best project possible. To insure that the highest standards are obtained, the qualifications-based procurement method is most suited to A/E services.

ISSUE:

(2) The qualifications-based procurement procedure for A/E services is really a noncompetitive selection process.

TALKING POINTS:

Nothing could be further from the truth. The U.S. Congress recognized the competitive nature of qualifications-based procurement of A/E services when it stated, while enacting the Competition in Contracting Act (P.L. 98-369, Sec. 2711) in July 1984, that:

"The term 'competitive procedures' means procedures under which an executive agency enters into a contract pursuant to full and open competition. Such term also includes (1) procurement of architectural or engineering services conducted in accordance with . . . (40 U.S.C. 541), [i.e., the Brooks Act]."

-- Architects do not oppose competition. In fact, the architectural profession is extremely competitive. Architects recognize that competition is healthy and desirable in marketing their services. However, they also realize that to serve the needs of their clients and the users of the buildings and other projects they design, they must compete on the basis of their skills, experience and ability to perform the services required -- not only on the illusory "economy" that a low-bid may seem to provide.

Simply stated, architects vigorously compete for federal procurement projects on a qualifications-based level. Price is still considered, except that it is taken into account after the initial selection phase. Thus, the Government has the unique opportunity to acquire A/E services of the most qualified A/E while at the same time obtaining a price that is fair and reasonable to the taxpayers.

ISSUE:

(3) Quality and fee should be considered at the same time.

TALKING POINTS:

-- Congress has considered and rejected the notion of price and quality being considered together at the selection stage. In its 1972 House Report, Congress noted:

"Regular competitive [i.e., price] negotiation would induce A/Es to favor the least costly design concept regardless of the impact on the quality of the plans and specifications. Furthermore, the less skilled, and those willing to provide a lower level of effort, would have a better chance of selection. They could compensate for their deficiences by quoting a lower fee." H.R. Rep. 1188, 92 Cong. 2d Sess. 4 (1972).

-- It is clear that all too often disproportionate weight is given the low price bidder at the expense of quality when the two factors are considered together at the selection stage.

-- Moreover, there can be no doubt that a client's efforts, be they private or public, to drive an architect's fee as low as possible increases the risk of faulty design.

In March 1984, the U.S. House Committee on Science and Technology, reported the findings of its investigation into structural failures in public facilities. The report cited several significant factors that can be considered critical in preventing structural failures. Among those identified by the Committee is the use of low bids for the procurement of A/E services. The report stated:

"Even when peer reviews, design scope, and on-site inspection are included in the bid request, there is a tendency to unrealistically reduce the price when price is known to be the primary basis for contract award. Nearly exclusive use of this 'low-bid' procedure has frequently resulted in insufficient funds allocated to a project to adequately verify the accuracy of design and to thoroughly check plans before construction. In other words, selection of an architect or engineer solely on a price competition basis provides the potential for reductions in quality due to initial underestimation of the costs and resources required to adequately perform the work." (Emphasis added) H.R. Rep. 621, 98th Cong., 2d Sess. 18 (1984).

-- The report addresses the problem described above by stating, "[f]ederal procurement practices that lead to or promote the selection of architects and engineers on a 'low-bid' basis should be changed to require prequalification of bidders." (Emphasis added) H.R. Rep. 621 at 18. The report goes on to note that, "[w]hile price must be a factor, it should not be made available to those evaluating the bids until pre-selection of acceptable bidders has first been made on the basis of past experience and performance." (Emphasis added) Id. at 18-19.

ISSUE:

(4) During this time of budget constraints, the federal government can obtain a cost savings by contracting with the lowest bidders.

TALKING POINTS:

It is patently incorrect to believe that lowest bid procurement results in budget cost savings. The following points exemplify the reasons qualifications-based procurement is more cost efficient than low-bid procurement:

-- Procurement of design services on the basis of their costs can be extremely shortsighted. It is well recognized that to calculate the true cost of a facility, a life-cycle basis must be considered; that is, initial construction cost plus operating cost over the building's anticipated useful life-span.

-- A study in Dun's Review calculates the initial cost of a building with a 40-year life as one-seventh of its life-cycle cost, with the remaining six-sevenths representing maintenance and operation costs.

-- Professional A/E fees amount to only a small percentage of construction costs (it is restricted to only 6% for federal projects), which represents a small proportion of the life-cycle costs. Notwithstanding this fact, an expertise on the part of an architect -- in energy-efficient design, for example -- can have a dramatic effect on maintenance and operating costs over the life-span of a building.

-- Moreover, The American Institute of Architect's 1985 comparative study on the costs associated with low-bid and qualifications-based procurement procedures -- in Maryland and Florida -- demonstrates conclusively the low-bid process is more time consuming and costs more administratively than qualifications-based procurement. As a result of the time spent in preparing bid documents, holding prebid conferences, and other time consuming administrative steps, the overall cost to procure A/E services under a price bidding method is extremely high.

-- Those who oppose the Brooks Act procurement procedure for A/E services often overlook the fact that the Act requires that the fee of the A/E be "fair and reasonable."

ISSUE:

(5) There are no inducements for an A/E firm to use cost-effective measures or efficient management practices when price bidding is not employed.

TALKING POINTS:

-- Congress recognized the inducements for cost-effective measures and efficient management when it observed that the negotiations to determine the "fair and reasonable" price would "protect the public in that these negotiations would . . . [be based] upon a close scrutiny and evaluation of the A/E's projected costs." H.R. Rep. 1188 at 6.

-- While there are no overhead restrictions, as such, the federal agencies are closely monitoring the claims made by A/E firms. If the government negotiators view some rates as unreasonable (the normal range being between 80-120%), they will challenge the firms to support their claims and refuse to pay any unsubstantiated overhead claims. Simply stated, the government will not pay for any costs that are not fair and reasonable.

-- Under the qualifications-based procurement procedure, past performance on federal projects is an important criteria in ranking the three most qualified firms. Thus, the performance evaluation provides an incentive or inducement for the A/E firms to employ cost-effective procedures and efficient management techniques since cost overruns, timeliness of completion and change orders are all part of the performance evaluation.

ISSUE:

(6) Qualifications-based procurement procedures leave the process open to gross overpayments and possible corruption since the ranking of the most qualified firm is so subjective.

TALKING POINTS:

In fact, the exact opposite is true -- qualifications-based procurement procedures help to safeguard against abuses often found in the low-bid method of procurement.

-- Price bidding is hardly a defense against corruption, as is evident from the number of bid-rigging and cost overrun scandals that have been uncovered over the years. In fact, bidding, because it seemingly is so objective, in and of itself creates an inducement for corrupt activities.

-- The best protection against corruption is a procurement system, such as that provided under the Brooks Act, which creates six major elements to the procurement procedure: public notice, submittals, review of submittals, ranking of respondents, negotiations, and engagement.

-- Under the Brooks Act procedure, firms are ranked and personal interviews are usually conducted with these firms to discuss each firm's qualifications, philosophies and overall approach to the project.

Because of the interview process, a panel of procurement officers usually have an opportunity to meet with the various A/E firms and review their qualifications; as a result, it is more difficult to reward a project to an unqualified firm.

-- Under the qualifications-based procurement method, several elements are commonly considered in the ranking of firms such as: (1) specialized experience for the work required, (2) past quality and performance of work, (3) record of timely completion on other assignments, (4) current workload and size of staff, (5) credit rating and financial stability, (6) reputation among fellow professionals, (7) awards, honors or other recognition of outstanding work, (8) special resources or capabilities, and (9) anticipated rapport and compatiability with the client.

Because there are a number of elements involved, other than merely providing the lowest bid, it is more difficult to obtain a job that would otherwise go to a more qualified architect.

ISSUE:

(7) Since A/E procurement has no price consideration and large firms are able to obtain a disproportionate number of government contracts, it is therefore, not within the concept of free enterprise.

TALKING POINTS:

Qualifications-based procurement is in fact the most competitive and open form of federal procurement possible since it is based on the ability to perform a job and not merely on the lowest price a firm can offer. It is not the qualifications-based procedure that helps larger firms to obtain federal projects but free market competition.

-- The Brooks Act provides a system of procurement in which design contracts are widely announced, so as to encourage a large number of firms to compete for the federal projects.

-- Under the qualifications-based method of procurement one of the elements used to rank a firm is its geographic location in relation to the job; therefore, work is spread out among many firms.

ISSUE:

(8) Qualifications-based procurement, without price bidding, is in the best interest of design professionals, and thus support of this concept is motivated by self-interest.

TALKING POINTS:

While it is true that qualifications-based procurement helps the architectural industry enjoy a more professional relationship with its clients, the clients also benefit from that experience.

-- Design professionals do not advocate qualifications-based procurement merely for self-interest reasons.

-- Many private and public officials support the Brooks-type procurement method as evidenced by the fact that over half the states use a similar method for procuring A/E services.

-- Moreover, the Brooks Act has been in existence for over 12 years and has met with widespread acceptance by various agency procurement officers.

-- The cost benefits, as discussed, can be substantial in terms of life-cycle costs when an architect's expertise is applied to a certain procurement project.

-- Merely deciding an award on lowest bid severely limits how much creative talent, exploration of alternatives, and other efforts an architect is able to devote to a project. The loser in such a situation is the federal government.

-- Congress has pointed out that the Brooks Act method of procuring A/E services "protects the interests of the taxpayers. Having won the competition on the basis of capability, the winning A/E must then negotiate his fee." (Emphasis added) H.R. Rep. 1188 at 3.

-- The only possible people who stand to lose under a qualifications-based method of procurement are the agency procurement officers who find that other techniques are simpler for them to use; and those who are far more adept at gaining assignments by offering cheap design work at the lowest price bid.

Conclusion

The American Institute of Architects believes that selecting architects on the basis of demonstrated qualifications and ability is in the best interest of the public. This system of selection fosters an atmosphere of trust and confidence between the purchaser and the architect.

The Brooks Act requires the federal government to announce publicly all contract specifications, to select and rank the three most qualified firms, and to conduct contract negotiations with the highest ranked of the three firms. It has been the experience of architects that when price bidding becomes even an element in the selection process, it is the firm providing the lowest price quotation and not the most qualified that is eventually selected. Therefore, any price bid modification to the Brooks Act method of qualifications-based selection will result in undoing the benefits of the current law.

Congress reaffirmed its commitment to the principles of the Brooks Act when it rejected an attempt to modify the act in 1984. For the reasons described above, Congress should once again reaffirm its commitment to qualifications-based procurement of A/E services under the Brooks Act by rejecting any attempts to make unwarranted modifications to the act.

We hope that the points made above will help to further explain the value in the qualifications-based procurement method for architectural and engineering services. Please feel free to contact Mark A. Casso (202/626-7375) in the Government Affairs Department for further information or to discuss other points that may be of interest.

ATTACHMENT 1

Public Law 92-582
92nd Congress, H.S. 12807 (Brooks Act)

Public Law 92-582
92nd Congress, H. R. 12807
October 27, 1972

An Act

To amend the Federal Property and Administrative Services Act of 1949 in order to establish Federal policy concerning the selection of firms and individuals to perform architectural, engineering, and related services for the Federal Government.

Architects and engineers.
Federal selection policy, establishment.
63 Stat. 377; 82 Stat. 1104.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.) is amended by adding at the end thereof the following new title:

"TITLE IX—SELECTION OF ARCHITECTS AND ENGINEERS

"DEFINITIONS

"SEC. 901. As used in this title—

"(1) The term 'firm' means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the professions of architecture or engineering.

"(2) The term 'agency head' means the Secretary, Administrator, or head of a department, agency, or bureau of the Federal Government.

"(3) The term 'architectural and engineering services' includes those professional services of an architectural or engineering nature as well as incidental services that members of these professions and those in their employ may logically or justifiably perform.

86 STAT. 1278
86 STAT. 1279

"POLICY

"SEC. 902. The Congress hereby declares it to be the policy of the Federal Government to publicly announce all requirements for architectural and engineering services, and to negotiate contracts for architectural and engineering services on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable prices.

"REQUESTS FOR DATA ON ARCHITECTURAL AND ENGINEERING SERVICES

"SEC. 903. In the procurement of architectural and engineering services, the agency head shall encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data. The agency head, for each proposed project, shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and shall conduct discussions with no less than three firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services and then shall select therefrom, in order of preference, based upon criteria established and published by him, no less than three of the firms deemed to be the most highly qualified to provide the services required.

"NEGOTIATION OF CONTRACTS FOR ARCHITECTURAL AND ENGINEERING SERVICES

"SEC. 904. (a) The agency head shall negotiate a contract with the highest qualified firm for architectural and engineering services at compensation which the agency head determines is fair and reasonable to the Government. In making such determination, the agency head shall take into account the estimated value of the services to be rendered, the scope, complexity, and professional nature thereof.

"(b) Should the agency head be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, at a price he determines to be fair and reasonable to the Government, negotiations with that firm should be formally terminated. The agency head should then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the agency head should terminate negotiations. The agency head should then undertake negotiations with the third most qualified firm.

"(c) Should the agency head be unable to negotiate a satisfactory contract with any of the selected firms, he shall select additional firms in order of their competence and qualification and continue negotiations in accordance with this section until an agreement is reached."

Approved October 27, 1972.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 92-1188 (Comm. on Government Operations).
SENATE REPORT No. 92-1219 (Comm. on Government Operations).
CONGRESSIONAL RECORD, Vol. 118 (1972):
July 26, considered and passed House.
Oct. 14, considered and passed Senate.

ATTACHMENT 2

A/E Selection Law: What the Legislators Said About the Brooks Act

Debate on the Bedell Amendment
U.S. House of Representatives
130 Congressional Record, May 31, 1984

A/E SELECTION LAW: WHAT THE LEGISLATORS SAID ABOUT THE BROOKS ACT

While discussing the Brooks Act's federal procurement procedure with Members of Congress and their staff, it may be helpful to know what they and their colleagues have said about the Brooks Act.

Sen. Charles H. Percy (R-IL):

"I support this legislation [the Brooks Act] because I believe it establishes a reasonable procurement system that results in high quality architectural and engineering work. Over the years the system . . . has worked apparently well." (Debate on the Brooks Act, 1972)

Sen. Lloyd M. Bentsen (D-TX):

"All we are doing in this legislation is recognizing that direct price competition will not secure the highest qualified professional services which are so crucial in insuring an efficient and economical facility." (Debate on the Brooks Act, 1972)

Sen. Spark Matsunaga (D-HI):

"The system protects the interests of the taxpayers, and the interests of the professionals who need not compromise solid quality to meet the cut-rate prices of ill-qualified competitors." (Debate on the Brooks Act, 1972)

Rep. Dante B. Fascell (D-FL):

"This system protects the taxpayers. Having won the competition on the basis of capability, the winning architects and engineers must then negotiate their fee [and] demonstrate that this fee is fair and reasonable." (Debate on the Brooks Act, 1972)

Rep. John D. Dingell (D-MI):

"If you want to deal on price and engineering you may get cheap engineering, but you may get a fantastically costly, dangerous, ineffective, and inefficient product." (Debate on the Bedell Amendment, 1984)

Rep. Frank Horton (R-NY):

"The cost of the services of architects and engineers is only a small part of the total cost of the projects involved, but the quality of those services has a significant effect on the total quality and cost." (Debate on the Bedell Amendment, 1984)

ATTACHMENT 3

STATE A/E PROCUREMENT LAWS

Arizona--State law permits either use of Brooks Act procedures or solicitation of price proposals.

California--State law follows Brooks Act procedures.

Colorado--State law follows Brooks Act procedures.

Connecticut--State law follows Brooks Act procedures.

Delaware--State law follows Brooks Act procedures.

Florida--State law follows Brooks Act procedures. Recent court decisions have interpreted the law as not prohibiting solicitation of price proposals when the scope of work can be clearly defined.

Georgia--State law permits either use of Brooks Act procedures or solicitation of price proposals.

Idaho--State law allows use of Brooks Act procedures.

Kansas--State law follows Brooks Act procedures.

Kentucky--State law follows Brooks Act procedures.

Louisiana--State law establishes qualifications-based A/E selection similar to the Brooks approach. A/E fees are pre-established by state agencies.

Maine--State law establishes qualifications-based selection without specific outlined procedures.

Maryland--State law now requires qualifications-based selection for all DOT and GSA contracts over $100,000 (effective 4/86).

Massachusetts--State law establishes qualifications-based selection procedures.

Minnesota--State law follows Brooks Act procedures.

Missouri--State law follows Brooks Act procedures.

Nebraska--State law follows Brooks Act procedures.

New Hampshire--State law follows Brooks Act procedures.

New Mexico--State law follows Brooks Act procedures.

New York--State law follows Brooks Act procedures.

STATE A/E PROCUREMENT LAWS
Page two

Oklahoma--State law follows Brooks Act procedures.

Pennsylvania--State law generally establishes qualifications-based selection procedures.

South Carolina--State law follows Brooks Act procedures.

Texas--State law establishes qualifications-based selection procedures. According to a recent Attorney General's opinion, the law does not prohibit discussion of cost or fee estimates during the selection process.

Utah--State law follows Brooks Act procedures.

Virginia--State law follows Brooks Act procedures.

Washington--State law follows Brooks Act procedures.

Wyoming--State law establishes qualifications-based selection procedures that permit discussion of non-binding fee estimates.

A number of other states that do not have state A/E procurement laws, including Alabama, Illinois and Wisconsin, generally adhere to Brooks Act selection procedures.

THE AMERICAN
INSTITUTE OF
ARCHITECTS

SELECTING ARCHITECTS AND ENGINEERS FOR PUBLIC BUILDING PROJECTS: AN ANALYSIS AND COMPARISON OF THE MARYLAND AND FLORIDA SYSTEMS

January 1985

Introduction

Design professionals play a critical role in the public building process. The quality of the design services provided by the architect or engineer is the single most important factor in determining the overall construction costs and life-cycle costs of a building. Since design services represent only a small percentage of the initial construction budget, it is in the best interest of the taxpayer to insure that the most qualified firms are selected for public projects.

Recognizing the need for a qualifications-based approach to procuring design services, the U.S. Congress established as federal law in 1972 (P.L. 92-582, commonly referred to as the "Brooks Act") the requirement that architects and engineers be selected for projects on the basis of their qualifications subject to negotiation of fair and reasonable compensation. Most states and numerous local jurisdictions also use Brooks Act procedures relying on the traditional selection method of negotiating a contract with the firm most qualified to provide the services. Should negotiations fail between the public owner and the highest-ranked firm, negotiations are terminated with that firm. Negotiations then take place with the second-most-qualified firm and so on down the line in order of their ranking until an agreement is reached.

A/E Selection in Maryland and Florida

This study compares the experience of Maryland's Department of General Services, which selects architects and engineers (A/Es) on the basis of price and other factors, with that of Florida's Department of General Services and State University System, which emphasize technical qualifications in the selection process and, thereafter, negotiate a "fair and reasonable" fee. A study of the Maryland public building procurement process was prompted by Maryland's advocacy of price competition in the A/E selection process and the belief of Maryland officials that a system based on price and other factors is more cost-effective than the traditional qualifications-based system. Florida, which uses the traditional Brooks Act approach, was selected for comparison with Maryland because, until price enters the process in Maryland, the A/E selection procedures in both states are similar.

Maryland. The 1974 law governing the selection of architects and engineers in Maryland requires that both price and professional qualifications be considered during the A/E selection process. The process involves the following key steps: 1) the state develops a comprehensive project program that provides

A/Es with "a clear understanding of the problem and the requested solution"; 2) a request for professional services is published in the Maryland Register; 3) those judged most qualified on the basis of Standard Form (SF) 254 and 255 submissions (forms setting forth the A/Es' qualifications) are placed on a short list and asked to submit price and technical proposals; 4) price and technical proposals are evaluated and firms are ranked; and 5) an award is made with "neither the price proposal nor the technical proposal becoming the sole criterion for selection." The law applies only to projects with estimated design services over $50,000.

Florida. The method of procuring architectural and engineering services in Florida is governed by the 1973 Consultants' Competitive Negotiation Act. The act establishes a qualifications-based system of selecting A/E services that involves the following steps: 1) public announcement of projects requiring A/E services, including general descriptions of the projects; 2) selection of a short-list of firms based on the submitted SF 254 forms and Professional Qualifications Supplement; 3) interviewing and final ranking of at least three firms based on the A/Es' understanding of the specific project requirements and the A/Es' approach and method; and 4) negotiation of a fair and reasonable fee with the selected A/E.

Conclusions

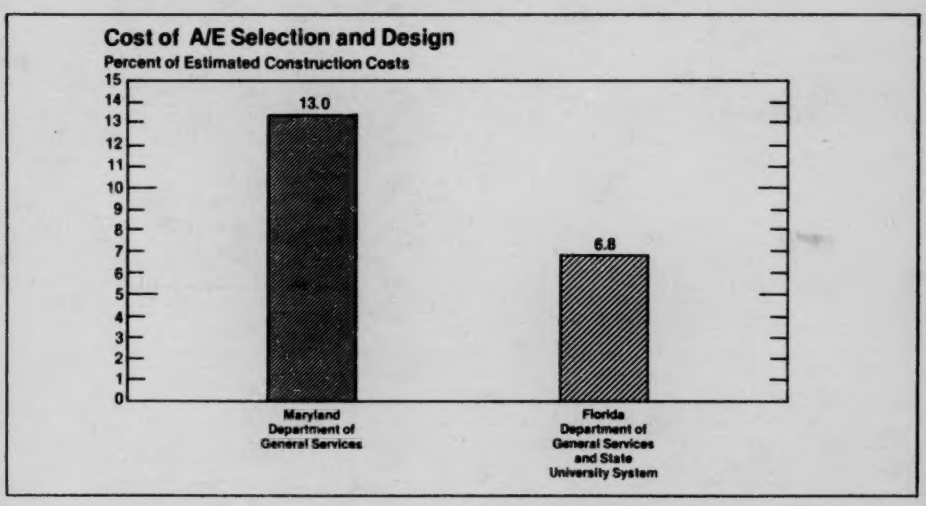
The following conclusions are based on an analysis of information and data supplied by the Maryland Department of General Services, Florida's Department of General Services and the State University System of Florida. (The Maryland Department of General Services handles both general public building construction and university system construction.)

1. Maryland's A/E selection process is significantly more time-consuming and expensive than Florida's. In Maryland, the necessity of preparing detailed programs on which A/Es can base price proposals results in added expense to the state in the form of administrative staff, time delays and consultant costs. These additional system costs are unique to the Maryland process.

Total costs of the A/E portion of Maryland's capital construction process average 13 percent of estimated construction costs. Total costs in Florida average 6.7 percent of estimated construction costs for the Florida Department of General Services and 7.3 percent for the State University System. A/E fees are lower in Maryland than in Florida; however, the added costs of the Maryland process far outweigh the savings in A/E fees that

result from a process in which the state develops detailed programs and A/E selections are made on the basis of both price and technical competence.[1]

The following chart shows the comparative costs of the A/E portion of the capital construction process in Maryland and Florida.



The Maryland A/E selection system, because of its requirement that competing firms submit elaborate technical proposals accompanied by fixed prices, also results in extraordinary costs to the A/E firms that compete but are not awarded contracts. Although not direct costs to the state, as operating expenses of the firms, those costs are eventually passed on to consumers of A/E services.

a. Maryland's A/E selection process requires a significantly larger administrative staff and budget than Florida's. The increased administrative costs in Maryland result from the necessity of preparing detailed programs on which A/Es can submit price proposals.

Since Maryland's law requiring selection based on price and technical proposals went into effect, there has been an 11.6 percent increase in personnel and a 17.9 percent increase in the budget (in constant dollars) of the DGS Office of Engineering and Construction, which participates in the A/E selection and capital construction process. In 1983, with a total of 96 personnel and a budget of $2.5 million, the Maryland DGS' Office of Engineering and Construction administered a capital construction program that averages $65 million in estimated construction costs annually.[2]

In comparison, the Florida Department of General Services which, like the Maryland DGS, administers procurements for many state agencies had a total of 51 personnel and an annual budget of $1.6 million in 1983 to handle a capital construction program that averages over $100 million.[2] In the 1975-83 period, the Maryland DGS awarded 174 A/E contracts on projects worth a total of $518 million in estimated construction costs; in the same time period the Florida DGS awarded 1,166 contracts on projects totaling $875 million in estimated construction costs.

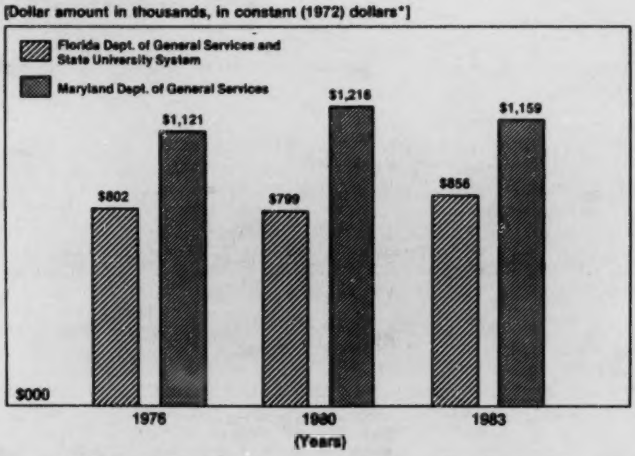
Florida's State University System, unlike Maryland's university system, administers its capital construction program independently. The size of Florida's University System program ($64 million) is roughly the same as the Maryland DGS' program, but the administrative staff and budget of Florida's University System is only one-tenth the size of Maryland's. In the period between 1980 (when the University System began procuring A/E services independently) and 1983, the State University System of Florida awarded 74 A/E contracts on projects totaling $191 million in estimated construction costs.

In terms of the effectiveness of administration, both the Maryland and Florida A/E procurement processes appear to be open and well-managed.

The chart on the next page illustrates the administrative budget of Maryland's and Florida's capital construction programs.

Comparative Capital Construction Program Administrative Budget 1976-1983

[Dollar amount in thousands, in constant (1972) dollars*]



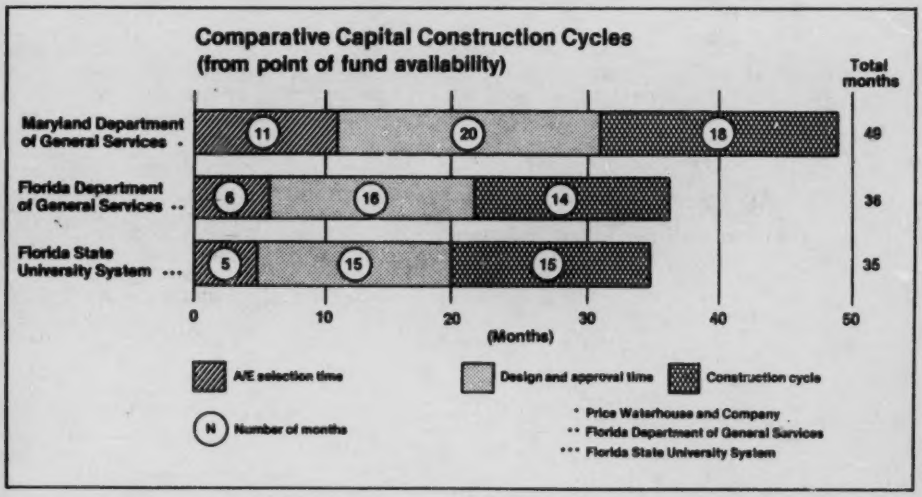
Source: Maryland Department of General Services; Florida Department of General Services and State University System

*Constant dollars are derived by using the implicit price deflator for the gross national product as a measure of inflation (Source: U.S. Department of Commerce, Bureau of Economic Analysis, National Income and Product Accounts).

b. Maryland's A/E selection process takes considerably longer to complete than Florida's. The total delay relating to the A/E portion of the capital construction process in Maryland is almost 10 months. The delay occurs while the detailed program descriptions are being prepared, during the actual selection process and during the design and approval phase.

The Maryland Department of General Services completes the A/E portion of the capital construction process, from the point that funds are approved to the beginning of the actual construction cycle, in 31 months. The same steps are completed in 22 months by the Florida Department of General Services and in 20 months by the State University System of Florida. From the point that funds are approved in Maryland, it takes 11 months to prepare program descriptions and select the A/E.

The comparative capital construction cycles in Maryland and Florida are detailed in the following chart.



2. Florida selects A/Es on the basis of technical competence; contrary to Maryland law, price appears to be the dominant selection factor in Maryland. In Florida's traditional qualifications-based process, initial A/E selection is made on the basis of demonstrated qualifications and competence. The agencies then negotiate an equitable fee with the most qualified firm, relying heavily on fee schedules.

By law Maryland considers both price and technical competence in the award of state contracts, but it appears that price is becoming the dominant factor. Of the last 40 projects awarded by the Maryland Department of General Services prior to June 1983, 33 (83 percent) went to the firm with the lowest price proposal.

3. User agencies in both states are generally pleased with their state's A/E selection process, but A/Es in Maryland are resentful of the system. Most A/Es who design state projects in Maryland dislike the system, which they feel rewards them inadequately. Accordingly, Maryland state projects are not attractive to many firms, who view them as work of last resort.

User agencies in both states are generally pleased with both the A/E selection system and the A/Es' work.

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[1]Development of detailed programs in Maryland is done in-house or by consultants prior to the A/E selection process. In Florida, programs are developed jointly by the state and the selected A/Es.

[2]This figure represents the average annual dollar value in estimated construction costs of projects for which A/E selections were made between 1975 and 1983. At any one time, the state agency would be administering projects in all phases of the planning, design and construction process, and the total estimated construction costs of all of those projects would be much greater.

FOREWORD

Questioning of the traditional qualifications-based approach to public procurement of architectural and engineering services led The American Institute of Architects in early 1983 to form an A/E Selection Consulting Group to examine the subject in conjunction with Institute staff. In May of that year, the Board of Directors of the Institute approved an analysis of Maryland's A/E procurement system for public buildings. The study was prompted by Maryland's advocacy of price competition in the A/E selection process and the belief of Maryland officials that a system based on price and other factors is more cost-effective than the traditional qualifications-based system. Philip A. Hutchinson Jr., Attorney at Law, was hired as a consultant to collect data and prepare a study on the Maryland procurement system.

Preliminary findings on the Maryland system were reported to the Board in September 1983. It was the consensus of the Board that in order to draw conclusions relative to the Maryland process it would be necessary to study a state with traditional qualifications-based selection procedures. Accordingly, the Board authorized a study of Florida's A/E procurement system. Florida was selected for comparison with Maryland because, up to the point that price enters the process in Maryland, the A/E selection procedures in both states are very similar.

Data on Florida were collected by Philip A. Hutchinson Jr. The final report was prepared by Nancy Somerville with assistance from Sharon Currens in the government affairs department, the American Institute of Architects. Philip A. Hutchinson Jr. and the AIA A/E Selection Consulting Group served as a review panel for the report.

INTRODUCTION

Architects and engineers (A/Es) play a critical role in the public building process. Although design services represent only a small fraction of initial construction costs, the quality of the design services plays a major role in determining both the overall costs and the life-cycle costs of the building. In procuring A/E services, therefore, public agencies have three objectives: first, to obtain high quality design services from an experienced and qualified firm; second, to insure that the selection process is carried out fairly and that all interested and qualified firms can compete; and third, to insure that the fee for design services is fair.

In 1972, the U.S. Congress recognized the need for a qualifications-based approach to procuring design services and established as federal law (P.L. 92-582) the policy that architects and engineers should be selected for projects on the basis of highest qualifications at a fair and reasonable price. This selection process, commonly referred to as the Brooks Act, endorses the traditional selection method of negotiating a contract with the architectural firm deemed most qualified to provide the services. Should negotiations fail between the public owner and the highest-ranked firm, negotiations are terminated with that firm. The same negotiation procedure then takes place with the second-most-qualified firm and so on down the line in order of their ranking until an agreement is reached.

The Brooks Act procedure is used by most states and numerous localities, and has been recommended by the American Bar Association's Model Procurement Code for State and Local Government.

This study compares the experience of Maryland, which selects architects and engineers on the basis of price and other factors, with that of Florida, which emphasizes technical qualifications in the selection process. A study of the Maryland procurement system was prompted by Maryland's advocacy of price competition in the A/E selection process and the belief of Maryland officials that a system based on price and other factors is more cost-effective than the traditional qualifications-based system. Florida, which uses the Brooks Act approach, was selected for comparison with Maryland because, until price enters the process in Maryland, the A/E selection procedures in both states are quite similar.

This study presents factual information about the Maryland and Florida A/E selection systems for public buildings. Since this review focuses on the public building process, information was collected only on Maryland's Department of General Services and

on Florida's Department of General Services and State University System. In Maryland, university system procurements are administered by that state's Department of General Services.

For the Maryland analysis, data were collected on projects awarded between 1975, when the current system was instituted, and 1983. Information on Florida's Department of General Services also covers the period between 1975 and 1983. Data on Florida's State University System, which began administering its procurements independently in 1980, cover the period between 1980 and 1983.

In preparing this study, heavy reliance was placed upon material compiled or supplied by others. The contributions from the State of Maryland and the State of Florida are notable in this regard. Maryland's Department of General Services was most cooperative in providing useful statistical data, studies and reports pertaining to the A/E selection process, as were Florida's State University System and Department of General Services. As appropriate, the source of information is identified throughout the report. The texts of the two state laws, and a status report on A/E selections compiled by the Maryland Department of General Services, are included in the appendices.

At the request of the Maryland Department of General Services, this report was provided to DGS officials for comment prior to publication. As a result of their review, some modifications were made in the study. However, it should be noted that the Maryland DGS disagrees with some of the conclusions drawn in the report.

The report was also reviewed by Robert Boerema, Director, Division of Construction and Maintenance, Florida Department of General Services.

The Law: Maryland Procurement of Architectural and Engineering Services

Maryland's law regulating A/E selection (Article 21, Annotated Code of Maryland, Title 9, "Procurement of Architectural and Engineering Services") was adopted in 1974 in the wake of scandals involving favoritism and alleged bribery in the award of state contracts for A/E services. In adopting the 1974 law, Maryland hoped to eliminate the abuses of a system that placed ultimate authority for selecting A/Es in the hands of the governor.

Method of Selection. The law establishes two professional services selection boards, one to serve transportation needs and another to assist the Department of General Services in the award of A/E contracts for the design of public buildings. For the purposes of this review only the work of the General Professional Services Selection Board (GPSSB) will be described although similar membership and rules of operation are applicable to the Transportation Professional Services Selection Board.

There are four permanent members and one floating member on the GPSSB: the secretary of General Services or his designee; one member chosen by the governor upon recommendation of the secretary of General Services; two members chosen by the governor from the general public "at least one of whom may not be an architect or engineer"; and the floating member who represents the user agency.

Under the law, the GPSSB must weigh both technical competence and price in recommending a firm for selection by the Board of Public Works. The reasons for the selection must be documented and the selected firm must have the financial capacity to protect the state against errors and omissions.

Applicability of the Law. All A/E contracts with estimated design fees in excess of $50,000 must be awarded on a competitive basis, which involves an evaluation of technical and price proposals from two or more firms. In making awards the law directs that "neither the price proposal nor the technical proposal shall be the sole criterion."

Public Announcement. When A/E services are sought, the law requires a public announcement to include a general description of the project and an indication of how interested firms may receive additional information. Furthermore, a copy of the announcement must be mailed to any firm requesting copies of state procurements.

Other provisions of the law include:

- Assistance to Municipalities. Upon request, the GPSSB must provide "advisory services in procuring architectural and engineering services to the municipalities, school boards or political subdivisions."

- Waivers. The competitive selection requirements may be waived in an emergency or when the A/E services cannot be completely defined.

- Truth-in-Negotiation. A/Es are required to certify that costs underlying their price proposals are "accurate, current and complete" with the right of the state to audit and recapture sums paid due to inaccurate costs.

- Non-collusion. A/Es are required to submit with their price quotation a certificate of non-collusion.

- Prohibitions. The law prohibits cost-plus-a-percentage-of-cost contracts and payment of contingent fees for assistance in obtaining the contract.

- Penalties. Violation of the law is a felony punishable by a fine of up to $20,000 and imprisonment of up to 10 years or both.

A copy of the law as set forth in Article 21, Sections 9-201 through 9-218, of the Annotated Code of Maryland is included in the appendices.

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Regulations of the General Professional Services Selection Board

A detailed set of rules and regulations was issued by the GPSSB to implement the law. In addition to restating the general requirements imposed by the legislature, the regulations define the architectural, engineering and landscape architecture services to which the law applies and elaborates on some of the legislative provisions. For example, construction inspection services (related to building code compliance) are excluded from coverage and must be awarded by competitive bidding; also, all GPSSB meetings are open and all records are available for public inspection.

Request for Procurement of Services. The user agency requiring A/E services expected to cost over $50,000 must submit a comprehensive program to the secretary of General Services. This program must be approved by both the Department of General Services (DGS) and the Department of State Planning (DSP). The program must provide the A/E with "a clear understanding of the problem and the requested solution" or it is supposed to be rejected. A "Program Manual" prepared by the DGS and the DSP contains detailed instructions that user agencies are expected to follow. Once the program is approved and the DGS certifies that the A/E services required cannot be provided in-house, the General Professional Services Selection Board is asked to make the A/E selection.

Public Announcement and Solicitation of Interest. After receipt of the DGS certification, the text of a public announcement, prepared by the user agency, is placed in the Maryland Register. The public announcement must provide at least 15 days notice and contain the following information: user agency; project number, name and description; the type of A/E services to be procured; and estimated project cost. In addition, any firm that has asked to be notified about prospective A/E procurements receives a copy of the announcement by mail.

Those firms who respond to the public announcement must provide to the DGS a U.S. Government Standard Form 254 "Architect-Engineer and Related Services Questionnaire," which sets forth various information about the firm. The DGS then asks each of the interested firms to submit U.S. Government Standard Form 255 "Architect-Engineer Related Services Questionnaire for Specific Projects."[1] Accompanying this DGS request is: a list of all A/E firms interested in the project; the criteria to be used by the Qualification Committee in establishing a short list of firms who will be asked to submit a technical and price proposal; and an indication of how interested firms may receive more information about the project.

Selection Procedure. A Qualification Committee, composed of licensed design professionals employed by the DGS, evaluates each interested A/E firm on the basis of the SF 255s and input from the user agency. A short list is prepared to include at least three firms deemed especially qualified to design the project.

The user agency submits the short list to the GPSSB indicating concurrence or non-concurrence and the reasons therefore. The GPSSB notifies candidates on the short list that they have been selected and requests each firm to submit a technical and price proposal. Unsuccessful competitors receive notification of firms on the short list and are given an opportunity to appeal their exclusion.

The request for technical and price proposals makes it clear that "neither the technical nor the price proposal should be the sole criterion for selection." A/Es are provided with guidelines for the preparation of technical and price proposals as well as with the DGS requirements applicable to A/Es. These requirements are set forth in a Procedure Manual for Professional Services and are important because they are incorporated by reference in the state's standard form of agreement. Provision is also made for a pre-proposal meeting, on site if necessary, to review the program and answer questions.

A Technical and Price Proposal Review Team, composed of a user agency representative and DGS technical staff, evaluates the technical proposals "without knowledge of firm name or price proposal" using the following criteria: 1) understanding of project and program; 2) firm's approach to problem work plan; 3) proposed work schedule; and 4) proposal presentation. If necessary, oral interviews are conducted after technical proposals have been evaluated and scored. Once the technical proposals have been evaluated and ranked, the sealed price proposals are opened and associated with the corresponding technical proposals. Each price proposal must be accompanied by a certificate of non-collusion.

At a public meeting of the GPSSB, the user agency makes a recommendation as to which firm should be selected and the reasons why. The Board renders an immediate decision and accepts, postpones for cause or rejects with recommendations of remedial action. Once the GPSSB selects an A/E, other competitors are given an opportunity to appeal. After appeals are heard and the selection is final, the GPSSB certifies the selection and the reasons for it.

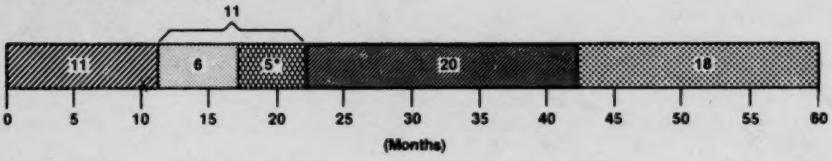
The selection of A/Es for projects with estimated design fees of $50,000 or less are made by the director of the DGS' Office of Engineering and Construction. Selection is done on the basis of SF 254s and recommendations from the user agency. Short-listed firms are asked to submit price proposals and, in some instances, technical proposals. Selection is usually based on the lowest price proposal.

[1] In its selection process, the Maryland DGS utilizes the A/E qualifications forms developed by the federal government for its own selection process. Standard Forms 254 and 255 are widely used by state and local governments for procurement of A/E services.

The Capital Construction Process

In order to understand fully the Maryland system for selecting architects and engineers for the design of public buildings, it is necessary to locate the point of A/E selection in the overall capital construction process and to establish the time involved for key phases of the process. The process can be divided into three major phases: 1) planning; 2) A/E selection, and design and approval; and 3) construction. The following information was, for the most part, developed by Price Waterhouse and Company and is contained in a 1981 report to the Maryland Department of General Services entitled "Capital Construction Program Management Study."

Maryland
Department of General Services
Construction Process Time Line



*This is a conservative figure derived from Price Waterhouse data. Average selection time on 174 projects studied was over 5½ months.

Agency budget submittal to fund approval
Program development to program approval
A/E selection-advertisement through contract
Design and approval
Construction

Source: "Capital Construction Program Management Study," Price Waterhouse and Company

For the Maryland Department of General Services, the capital construction process, from agency budget submissions to user acceptance of buildings, takes five years or more.

Planning. In July prior to the year in which funds are required, the user agencies submit their capital budget requests to the Department of State Planning (DSP). DSP reviews these requests and forwards its recommendations to the governor. The governor reviews and modifies this list of projects and presents

the results to the General Assembly in the form of the capital budget. Funds become available for use by the agencies on June 1 of the year following the initial request (11 months after agency budget submissions).

The law (Article 88C, Sec. 10 of the Annotated Code of Maryland) requires that "... no appropriations will be authorized for preliminary planning funds (for the initiation of a capital project) unless the agency in question has submitted to the Department of State Planning a program describing in detail the purpose of the project for which funds are being requested." To expedite the program review process, submitting agencies are required to submit their proposed projects to both the Departments of State Planning and General Services, which evaluate them in terms of: 1) how well the requesting agency's needs will be served by the project and 2) whether or not the recommendations to the consultant architect/engineer are sufficient to permit a clear understanding of the problem and the requested solution.

In actuality, the detailed program containing a description of the project appears to be prepared after the planning funds are available. Once funds are approved, development and approval of the program takes approximately six months.

The total duration of the planning cycle, then, from the submission of the capital budget request to the approval of a detailed program, is approximately 17 months.

A/E Selection, and Design and Approval. The A/E selection period, from advertisement through award of a contract, averages five months. (From the point that funds are approved, it takes 11 months to select an A/E.) Once the A/E has been selected, a pre-design conference is held in which any questions concerning the program are answered and a schedule for completion of the project is established.

During the design and approval phase, the A/E develops three types of drawings, which are submitted to DGS for approval: schematics, design development and construction. The design and approval phase, which lasts approximately 20 months, is concluded with DGS approval of the construction drawings.

Construction. The first step in the construction cycle is the selection of a general contractor through a competitive bidding process using the detailed plans and specifications prepared by the A/E. The selection is followed by a work initiation conference. At the conference, the construction drawings are reviewed with the contractor and a formal authorization to begin work is issued by DGS. The 18-month construction cycle ends with user acceptance of the building.

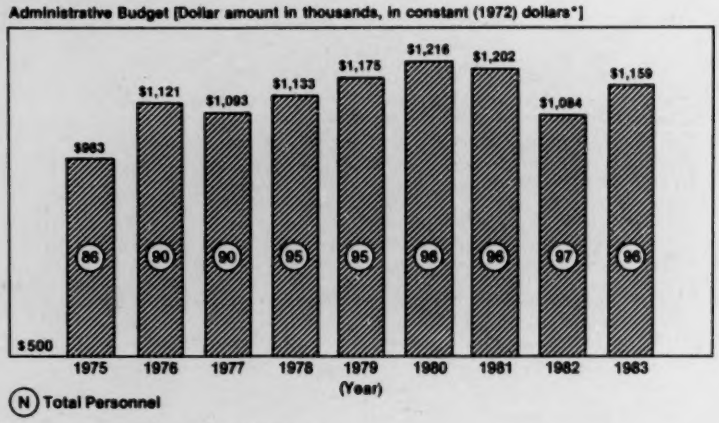
Administrative Costs of the A/E Selection Process.

Within the Maryland Department of General Services, the Office of Engineering and Construction administers the state's capital improvement program; as such, it participates in the A/E selection process, assesses technical and price proposals submitted by A/Es and monitors the actual work. In 1983, with a total of 96 personnel and a budget of approximately $2.5 million, the office administered a construction program worth approximately $65 million[1] in estimated construction costs. Fifty-nine of the total personnel are specifically assigned to administration of the design phase of the capital construction process.

The chart shows an 11.6 percent increase in personnel and a 17.9 percent increase in budget (in constant dollars) over the period that the Maryland A/E selection law has been in effect. (The actual budget figures, in non-constant dollars, rose from approximately $1.2 million in 1975 to $2.5 million in 1983.)[2]

Maryland
Department of General Services
Office of Engineering and Construction

Administrative Budget [Dollar amount in thousands, in constant (1972) dollars*]



Source: Maryland Department of General Services

*Constant dollars are derived by using the implicit price deflator for the gross national product as a measure of inflation (Source: U.S. Department of Commerce, Bureau of Economic Analysis, National Income and Product Accounts).

[1]This figure represents the average annual dollar value in estimated construction costs of projects for which A/E selections were made between 1975 and 1983, under the system in which both price and technical proposals are considered. At any one time, the state agency would be administering projects in all phases of the planning, design and construction process, and the total estimated construction costs of all those projects would be much greater.

[2]The budget of the Maryland DGS' Office of Engineering and Construction is portrayed in the chart for purposes of comparison with the equivalent offices in the Florida Department of General Services and State University System. The cost of the A/E portion of the Capital Construction program is estimated at 20 percent of the budget of the Office of Engineering and Construction's Design and Approval Section.

Overview of Projects

Between August 1975 and June 1983, the Maryland Department of General Services awarded 174 A/E contracts under the system in which both price and technical proposals are considered. The contracts totaled $22.4 million in A/E fees[1] on projects involving $518 million in estimated construction costs. Of the projects, 93 were for new construction, 64 were for renovations and the rest were for studies and construction inspection.

On those projects, A/E fees averaged 3.7 percent for new construction and 4.7 percent for renovation. The spread of fees on new construction ranged from a high of 5.5 percent on jobs with an estimated construction cost of under $1 million to 2.7 percent on jobs in the $20-30 million range.

As of June 1983, 54 of the 174 projects had been completed, with actual construction costs of $151 million, 27 percent higher than estimated.

MARYLAND DEPARTMENT OF GENERAL SERVICES

Distribution of Fees
New Construction
1975-83

Estimated Construction Cost	No. of Projects Awarded	Total Estimated Construction Cost (in thousands)	Total Lump Sum Fees	Percent of Estimated Construction Cost
0- 500,000	0	———	———	———
500,001- 1,000,000	21	$16,258	$901,044	5.54%
1,000,001- 2,000,000	24	39,205	$1,766,335	4.51
2,000,001- 3,000,000	13	34,152	$1,499,472	4.39
3,000,001- 4,000,000	4	15,800	$499,710	3.16
4,000,001- 5,000,000	7	32,950	$1,318,554	4.00
5,000,001-10,000,000	15	95,500	$3,131,564	3.28
10,000,001-20,000,000	6	84,857	$3,207,207	3.78
20,000,001-30,000,000	2	52,000	$1,420,950	2.73
30,000,001-40,000,000	1	31,500	$1,195,956	3.80
TOTAL	93	$402,222	$14,940,792	Avg. 3.71%

Source: Maryland General Professional Services Selection Board

MARYLAND DEPARTMENT OF GENERAL SERVICE

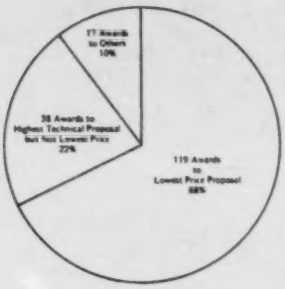
Distribution of Fees
Alterations/Renovations
1975-83

Estimated Construction Cost	No. of Projects Awarded	Total Estimated Construction Cost (in thousands)	Total Lump Sum Fees	Percent of Estimated Construction Cost
0- 250,000	0	----	----	----
250,001- 500,000	12	$ 4,403	$ 529,020	12.01%
500,001-1,000,000	22	18,153	992,344	5.47
1,000,001-2,000,000	20	30,942	1,328,149	4.29
2,000,001 3,000,000	5	14,400	583,285	4.05
3,000,001-4,000,000	1	3,100	113,928	3.68
4,000,001-5,000,000	3	12,820	590,865	4.61
5,000,001-6,000,000	0	----	----	----
6,000,001-7,000,000	1	7,000	139,800	2.00
TOTAL	64	$90,818	$4,277,391	Avg. 4.71%

Source: Maryland General Professional Services Selection Board

Price as a Factor in Selection. It is not unusual for the price proposals of competing firms to vary significantly. Spreads between high and low proposals have been as much as 300 percent. Of the 174 awards, 119 (68 percent) went to the firms with the lowest price proposal. Forty-nine of those 119 firms or 28 percent also had the highest-scored technical proposal. Thirty-eight awards (22 percent) went to firms that had the highest-ranked technical proposal but did not offer the lowest price. There were 17 awards to firms with neither the highest technical score nor lowest price.

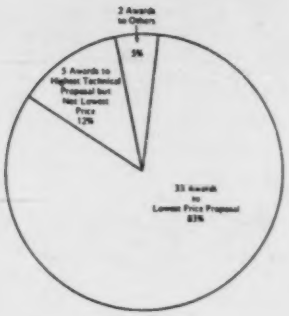
Importance of Low Price
Compared to Ranking of Technical Proposal
in the Maryland A/E Selection Process


17 Awards to Others 10%
38 Awards to Highest Technical Proposal but Not Lowest Price 22%
119 Awards to Lowest Price Proposal 68%

174 Projects
August 1975 to June 1983

The trend appears to favor low price. Of the last 40 projects awarded prior to June 1983, 33 (83 percent) went to the A/E firm with the lowest price proposal. Of those awards, 10 firms (25 percent) also had the highest technical score. Seven of the 40 awards (17.5 percent) went to firms that did not offer the lowest price; five of these seven had the highest technical proposals and two awards went to firms with neither highest technical score nor lowest price.[1]

Importance of Low Price
Compared to Ranking of Technical Proposal
in the Maryland A/E Selection Process



40 Projects
March 1981 to June 1983

A recent release (June 1984) from the Consulting Engineers Council of Metropolitan Washington (CECMW) focuses on the high percentage of awards given to the lowest fee proposal. The CECMW study points to the fact that staff hour estimates are required in the technical proposals and suggests that, since staff hours can be related to price, Maryland's consideration of technical proposals is not really separate from the consideration of price. The paper alleges that the state's ranking of technical proposals favors those firms that provide lower staff hour estimates.

Time to Award A/E Contracts. For the 174 contracts, selection time ranged from approximately 3 to 18 months (100 to 550 days), with an average time over the period of 5½ months (167 days). From the point of fund availability, A/E selection took 11 months. The additional time is required to prepare the detailed project information needed for price proposals.

Program Preparation. On the 174 projects, consultants were used in 39 instances to prepare the detailed programs the state requires in order to solicit price proposals from A/Es. Of the 39 programs prepared by consultants, 16 were prepared by one consultant. The actual cost of consultants on the 39 projects was $587,000 or .3 percent of the estimated construction costs of those projects. For the 135 projects where programs were developed in-house, the estimated cost of program development was $189,000. This figure was derived by using actual costs where they are reported by the state and by using an estimate of $2,000[2] per project for projects where information was unavailable.

Level of Competition. Usually between 10 and 20 firms are interested enough in a job to submit both SF 254s and SF 255s.

Interviews with State Officials. As part of the study of the Maryland system, interviews were held with state officials with key roles in the A/E selection and construction process. They were asked about such things as the adequacy of programs, the time involved in the selection process, the level of competition, the importance of price vs. technical proposal and the quality of A/E work.

It was generally acknowledged that the initial programs are inadequate insofar as setting forth criteria for the A/Es' technical proposals. This occurs because user agencies, uncertain which projects will be funded, wait for funding approval before completing a program that is sufficiently detailed for soliciting price proposals. This significantly adds to the time required to select the A/E.

Officials agreed that the selection process takes more time than the former system due to selection and documentation requirements. Officials expressed general satisfaction with the level of competition, but acknowledged that the quality of the A/Es' work varied.

Interviews with A/Es. In addition, interviews were conducted with a representative sample of A/Es who have done work for the State of Maryland. All of the firms interviewed said they approached state work no differently from private work and attempted to provide a full range of services. A/Es acknowledged that their fee proposals were "cut to the bone" and most said their ultimate compensation was inadequate. Typically, A/Es responded that the jobs were not profitable; some firms interviewed commented that, because of the low compensation, state work is not attractive or is last-resort work.

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[1]According to the Maryland Department of General Services, 90 percent (36 awards) of these 40 awards went to firms with the lowest price proposals; 12 of those firms had highest-scored technical proposals, and 24 of the firms had what the Maryland DGS terms "acceptable" technical proposals.

[2]This is a conservative estimate based on interviews with Maryland Department of General Services personnel. Consultant costs for developing programs averaged over $15,000 per project.

Total Costs of the A/E Selection Process

In order to determine the total costs of A/E selection in Maryland, the following factors must be included: A/E fees; DGS and user agency administrative costs; program preparation costs; and cost of system delay. These factors can be expressed in the following equation:

$$\frac{\text{A/E Fees} + \text{Administrative Costs} + \text{Program Preparation Costs} + \text{System Delay}}{\text{Total Estimated Construction Costs}} = \text{Total Costs (As a percent of estimated construction costs)}$$

Total A/E fees, administrative costs, etc., for all nine years are used in the formula and expressed as a percentage of total estimated construction costs of projects for the nine-year period.

1.	A/E Fees	$22,365,000
2.	Administrative Costs	$ 3,212,000
	General Services	$2,141,000
	User Agencies	$1,071,000
3.	Preparation of Programs	$ 776,000
	In-house Resources	$ 189,000
	Consultants	$ 587,000
4.	Delay	$41,026,000
	Total	$67,379,000

$$\frac{67,379,000}{518,000,000} = \frac{13}{100}$$

The costs involved in the A/E portion of the capital construction process in Maryland, therefore, are estimated to be 13 percent of estimated construction costs of the projects for which A/E services were procured between 1975 and 1983.

Total Estimated Construction Costs. Total estimated construction costs for projects in the nine-year period were $518 million.

A/E Fees. Total A/E fees through the nine-year period were $22,365,000.

Administrative Costs. The Maryland Department of General Services' administrative costs for the A/E portion of the capital

construction process are assumed to be 20 percent of the budget of the DGS Office of Engineering and Construction's Design and Approval Section. User agencies' costs are estimated to be 50 percent of General Services' costs.[1]

Program Preparation Costs. The actual cost of consultants, on the projects for which consultants were hired, totaled $587,000. For the projects where programs were developed in-house, program development costs are estimated at $189,000, based on reported actual costs and an estimate of $2,000[2] per project where costs were not reported. This cost is unique to the Maryland system, which requires detailed program development in order to solicit price and technical proposals from A/Es.

Delay. The cost of delay in the A/E portion of the capital construction process is based on 9.9 months of delay and an annual inflation rate during the period of 9.6 percent[3] (.8 percent per month). The inflation rate is applied to the total estimated construction costs.

The period of delay is based on 2 months (60 days) delay in the program development, submittal and approval phase, 2.9 months (87 days) delay in the selection of the A/E and 5 months (149 days) of delay in the design and approval phase. Delay in the program submittal/approval process occurs because of the need to prepare programs detailed enough to use to solicit price proposals. Maryland averages 6 months (180 days) in program development, submittal and approval. (As a result, A/E selection cannot be completed until 11 months after funds become available.)

A/E selection time from point of advertisement to final selection averages 4.9 months (147 days). [This figure is conservative. On the 174 projects surveyed, actual A/E selection time averaged over 5½ months (167 days.)][4] Two months is considered normal, based on the experiences of the federal government, private industry and other states.[5] The Maryland system requires an extra step in the A/E selection process--A/E preparation and department evaluation of price and technical proposals.

The design and approval process in Maryland averages 20 months (599 days). Fifteen months (450 days) are considered normal here, based on the comparable cycles of the federal government's, private industry's and other states' capital construction processes. The project program is normally defined by the A/E during this phase. However, since Maryland completes that work in-house prior to the design and approval phase, this phase in Maryland's capital construction cycle should be even shorter.

Total delay time is 296 days or 9.9 months.

Cost to Unsuccessful Competitors. An additional cost of the Maryland A/E selection process, which is not included in the preceding equation, is the cost to unsuccessful competitors. The cost to A/E firms of preparing and submitting SF 254 and SF 255 forms is minimal. In the Maryland A/E selection process, however, short-listed firms must submit price and technical proposals. The extraordinary cost to the firms of developing those proposals is unique to the Maryland system. The cost to the unsuccessful competitors is estimated at $2,000[6] per submission. In the 1975-83 period, 696 firms submitted unsuccessful proposals, bringing the total cost to unsuccessful competitors to $1,392,000. Although these costs are borne by the firms, they may be considered indirect costs to the state since, as operating expenses of the firms, they are eventually passed on to all consumers of A/E services.

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[1]An additional cost of the Maryland A/E selection process is the GPSSB, which has an annual budget of approximately $50,000. These costs are not included in the estimated total costs of the Maryland system because comparable data on the Florida selection boards were not available.

[2]This is a conservative estimate based on interviews with Maryland Department of General Services personnel; consultant costs for developing programs were significantly greater ($15,000 per project).

[3]The average annual inflation rate is derived from the U.S. Government "Price/Wage Scales and Cost Indexes for Construction, 1981," Statistical Abstract of the United States, p. 742.

[4]The Maryland Department of General Services indicates that A/E selection time has been decreasing since the data used in this study were compiled. The figures presented in this report are accurate for the time period studied.

[5]Source: "Construction Contracting Systems," A Report on the Systems Used by PBS and Other Organizations, General Services Administration.

[6]On a representative sample of projects, A/Es' costs of preparing technical and price proposals varied from $1,500 to $5,000. One firm indicated that it has submitted 47 such proposals at a total cost of $1,780,000; this experience, however, is not typical, since several large engineering jobs of unusual expense were included.

Conclusions

Based upon an overall review of the Maryland A/E selection system and on data furnished by the Maryland Department of General Services, the following conclusions are justified:

1. Administration and Cost. The Maryland A/E selection process is time-consuming and expensive. The necessity of preparing detailed programs on which A/Es can base price proposals results in added expense to the state in the form of administrative staff, time delays and consultant costs. These additional system costs are unique to the Maryland process. Total costs of the A/E portion of the Maryland capital construction process average 13 percent of estimated construction costs--much higher than comparable costs at the federal level or in the private sector. The system also results in extraordinary costs to the A/E firms that are short-listed and prepare price proposals but are not awarded contracts.

Delay in the Maryland process occurs while the detailed programs are being prepared, during the actual selection process and during the design and approval phase. The A/E portion of the capital construction process, from the point that funds are approved to the beginning of the actual construction cycle, takes 31 months. From the point that funds are approved it takes 11 months to prepare program descriptions and select the A/E.

The total delay relating to the A/E portion of the capital construction process in Maryland is almost 10 months.

2. A/E Fees. A/E fees are low. However, the added administrative and construction costs of the Maryland process far outweigh the savings in A/E fees.

3. Basis of A/E Selection. By law, Maryland considers both price and technical competence in the award of state contracts, but it appears that price is becoming the dominant factor in selection. Of the last 40 projects awarded by the Maryland Department of General Services prior to June 1983, 33 (83 percent) went to the firm with the lowest price proposal.

4. User Agency and A/E Evaluations. Most A/Es who design state projects in Maryland are resentful of the system and feel they are compensated inadequately. Accordingly, Maryland state projects are not attractive to many firms who view them as work of last resort.

User agencies are generally pleased with the A/E selection process and with the A/Es' work.

The Law: Consultants' Competitive Negotiation Act

In 1971, Florida Governor Reubin Askew convened an Engineering Advisory Committee to study alternative methods of procuring A/E services and to recommend a procurement procedure that would insure selection of highly qualified A/Es and prevent abuses in contract awards. Under Florida's A/E selection procedures at that time, the governor and the cabinet approved the selection of professionals for large projects--a practice that opened the door to charges of political favoritism. The legislation drafted by the Advisory Committee, the Consultants' Competitive Negotiation Act (CCNA), became law in 1973. The purpose of the law was to promote competition and insure selection of the most qualified A/E firms at fair and reasonable fees.

Method of Selection. The law directs each agency to adopt administrative procedures for evaluating professional services. The following factors must be included in the evaluation: capability and adequacy of professional personnel; past record and experience; willingness to meet time and budget requirements; location of project in relation to the location of the firm; the firm's work load; and the volume of work previously awarded to the firm by the agency. The latter factor is included to encourage an equitable distribution of contracts among qualified firms, but must not violate the principle of selection of the most highly qualified firms.

Following evaluation of the firms' qualifications, the agency must select and rank in order of preference no fewer than three firms that the agency determines to be highly qualified to perform the required services.

After ranking a short list of firms, the selecting agency begins contract negotiations with the top-ranked firm. The agency analyzes the cost of the A/E services required and the scope and complexity of the services, and employs a fee curve as a guide in determining a fee that is fair, competitive and reasonable. If the agency is not able to negotiate a contract with the top-ranked firm, negotiations with that firm are terminated and the agency begins negotiations with the second-most-qualified firm. Should those negotiations also fail, the agency begins negotiations with the third-ranked firm. In practice, the agencies seldom need to go to the second- or third-ranked firm.

Applicability of the Law. The CCNA applies to procurement of A/E services for construction projects with estimated construction costs over $100,000 and to consultant contracts over $5,000. The law applies to all state agencies and political subdivisions of the state.

Public Announcement. The CCNA requires public announcement of all proposed contracts; the announcements must include a general description of the project and instructions to interested firms on how to apply for consideration.

Other provisions of the law include:

- Assistance to Municipalities. Upon request, the Department of General Services or the Department of Transportation can provide assistance in the selection and negotiation of service contracts with fees over $25,000 to municipalities, political subdivisions, school boards or school districts. The department will be reimbursed for the costs involved.

- Waivers. The CCNA does not apply in case of valid public emergencies.

- Truth-in-Negotiation. For lump-sum or cost-plus-fixed-fee contracts over $50,000, A/Es are required to certify that wages and other cost factors supporting the compensation are "accurate, complete and current at time of contracting." The state may adjust the contract to exclude sums resulting from inaccurate cost data.

- Prohibitions Against Contingent Fees. Each contract for A/E services must contain a prohibition against contingent fees for assistance in obtaining the contract. Giving or receiving contingent fees is a first-degree misdemeanor and punishable by law.

A copy of the Consultants' Competitive Negotiation Act, as set forth in Florida Statutes, Section 287.055, is included in the appendices.

Regulations of the Department of General Services and the State University System

Florida's public building program is administered through two separate entities. The Florida Department of General Services (DGS) has responsibility for all state public buildings other than university facilities. The State University System (SUS) began administering its own building program in 1980. Both DGS and SUS have adopted administrative procedures for complying with the provisions of the law as required by the CCNA. Discussions of both the Department of General Services' and the State University System's regulations follows.

The administrative regulations of the Department of General Services are contained in Chapter 13 D-3 of the Florida Administrative Code. In the Department of General Services, the responsibility for negotiating contracts is vested in the Division of Building Construction and Property Management for all projects having funds appropriated to DGS for construction, regardless of which agency will use the building after completion.

The regulations of the State University System are contained in the SUS Board of Regents (6C-14.01 through 6C-14.06, Chapter 6C-14), "Procedures for Administration of Delegated Authority for Construction Programs."

Public Announcement and Solicitation of Interest. For major projects requiring A/E services, i.e., those projects which fall under the purview of the CCNA, public announcement is made in the Florida Administrative Weekly. The announcement includes a general description of the project and details the qualifications data that firms must submit in order to be considered.

A/Es interested in the project submit a U.S. Government Standard Form 254, "Architect-Engineer and Related Services Questionnaire," along with the DGS or SUS Professional Qualifications Supplement, copies of the firm's Professional Registration Certificates, a copy of the firm's Corporate Charter Registration, if applicable, and other data, if any, determined to be necessary for the specific project. Selection for a project is made from the firms that have submitted a letter of transmittal and the required supporting data.

Selection Procedures. In the State University System, a Certification and Selection Committee is established by the Board of Regents, Office of Capital Programs. The members of the committee are: 1) the director of the Office of Capital Programs or a designee; 2) two representatives from the planning staff of the appropriate university; 3) a representative of the Department of

Education staff; and 4) other members as agreed upon by the committee.

In the Department of General Services, the Certification and Selection Committee is composed of: 1) the director of the Division of Building Construction and Property Management or a designee; 2) the chief of the Bureau of Construction or a designee; 3) the project director from the bureau; 4) a representative of the user agency; and 5) other members as agreed. DGS also has an A/E selection coordinator whose functions include checking applicants' information for completeness and processing the committee's recommendations.

Members of the Certification and Selection Committee are briefed on the scope of the project and the services involved, and evaluate the submitted materials along with the agency's performance files on those firms that have previously done work for the agency. Each application is rated in the following areas: 1) past performance; 2) experience and ability; 3) current work load; and 4) location.

After assigning a preliminary rating to the firms, the Certification and Selection Committee holds oral interviews with at least the three top-ranked firms. The firms are notified by telephone, and receive a follow-up letter which includes a program or other project data and lists the areas to be covered in the interview.

The Department of General Services conducts in-person interviews for architectural projects above $1 million in estimated construction costs, for projects of unusual complexity, for engineering projects over $500,000 in construction costs, and for consultant studies over $25,000. For other projects, DGS conducts telephone interviews with the top-ranked firms.

After the interviews are completed, the SUS Selection Committee rates the short list of firms on: 1) the A/Es' understanding of the program and project requirements and 2) the A/Es' approach and method. The Committee then factors in the volume of agency work done by the A/E applicants.

The DGS Selection Committee rates the short list of firms on: 1) understanding of the program and project; 2) approach and method; 3) volume of work performed for the agency; and 4) current work load. When the final ranking has been determined, the committee submits its recommendations.

The SUS committee forwards its recommendations to the Facilities Committee of the Board of Regents, which will in turn present

the recommendations to the full board, which gives final approval to the selection.

Within DGS, the Selection Committee reports its recommendations to the A/E selection coordinator, who prepares the selection approval letter for the signature of the chief of the Bureau of Construction and the director of the Division of Building Construction and Property Management. The letter is sent to the executive director of DGS for final approval; selection results are reported to the governor and the cabinet on a monthly basis.

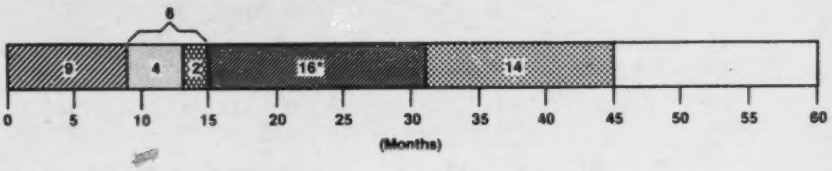
After final approval, by the DGS executive director or the SUS Board of Regents, copies of the letter of approval are sent to the three top firms and the selection results are published in the Florida Administrative Weekly. In negotiations with the A/Es, both the Department of General Services and the State University System rely heavily on fee curves.

FLORIDA'S DEPARTMENT OF GENERAL SERVICES

The Capital Construction Process

In order to evaluate Florida's system of procuring architectural and engineering services, the A/E selection process must be placed within the context of Florida's overall capital construction process. For the purposes of this report and to facilitate comparison, the capital construction process has been divided into three major phases: 1) planning; 2) A/E selection, and design and approval; and 3) construction. The following information was derived from data furnished by the Florida Department of General Services.

Florida
Department of General Services
Construction Process Time Line



*This figure ranges from 2 to 16 months.

Agency budget submittal to fund approval
Program development to program approval
A/E selection-advertisement through contract
Design and approval
Construction

Source: Florida Department of General Services

For the Florida Department of General Services, the capital construction process, from submission of budget requests to user acceptance of buildings, takes between 31 and 45 months, or between 2.5 and 3.8 years.

Planning. After user agencies submit their capital budget requests to the Department of General Services, funds become available for approved projects on July 1 of each year (nine months after agency budget submissions). Detailed programs for

the projects are submitted by the user agencies in the next three months. The detailed programs must be given the final approval of both DGS and the Executive Office of the Governor. On average, programs receive final approval four months after funds are approved.

From final preparation and submission of capital budget requests to final program approval, the DGS planning cycle takes 13 months.

A/E Selection, and Design and Approval. The A/E selection phase, from advertisement through contract negotiation and final contract award, takes approximately two months to complete. (From the point that funds are approved, then, it takes six months to select an A/E.)

Final details of the project are discussed in a pre-design conference, which begins the design and approval cycle. Submission and approval first of initial schematics, then of design development drawings and finally of construction drawings takes between 2 and 16 months, depending on the program complexity, scope of services and construction funding.

Together, the A/E selection and design and approval cycles take between 4 and 18 months.

Construction. The selection of the general contractor is the first step in the construction cycle. On average, 1.5 months are required to select the contractor. Total construction time up to user acceptance of the building averages 12 months.

The construction cycle for DGS projects, then, is completed in approximately 13½ months.

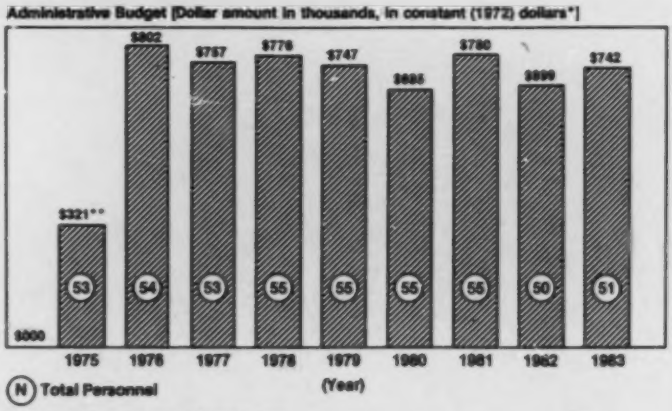
Administrative Costs of the A/E Selection Process

Within DGS, the Division of Building Construction and Property Management is resonsible for A/E selection and negotiation of contracts for all projects handled by DGS. In 1983, with a total of 51 personnel and a budget of approximately $1.6 million, the division administered a construction program of over $100 million[1] in estimated construction costs.

The chart below shows the division's administrative budget. In constant dollars, the division budget decreased 7.5 percent between 1976 and 1983. Over the same period of time, departmental staff decreased 5.6 percent.

Florida Department of General Services
Division of Building Construction and Property Management
Bureau of Construction

Administrative Budget [Dollar amount in thousands, in constant (1972) dollars*]



Source: Florida Department of General Services

*Constant dollars are derived by using the implicit price deflator for the gross national product as a measure of inflation (Source: U.S. Department of Commerce, Bureau of Economic Analysis, National Income and Product Accounts).

**The 1975-76 increase represents the difference in cost of A/E selection prior to and following implementation of the Consultants' Competitive Negotiation Act.

It is estimated that the A/E selection process accounts for 20 percent of the total division work load. Administrative costs of the Florida DGS' A/E procurement process, based on the budget and personnel data of the Division of Building Construction and

Property Management, are estimated at $2,143,515 for the nine years 1975 through 1983 or, on average, $238,168 per year.

[1]This figure represents the average, annual dollar value in estimated construction costs of projects for which A/E selections were made between 1975 and 1983. The figure excludes new construction projects under $500,000 in estimated construction costs and renovation projects under $250,000 in estimated construction costs.

Overview of Projects: Department of General Services

The Florida DGS manages a large construction program. Typically, each year 300 to 400 state projects are in the programming, design or construction phases. Approximately one-third of the total number of projects in progress are completed each year. In September 1983, for example, the DGS Division of Building Construction and Property Management was managing 361 projects with a total value of $317,643,318. The following chart shows the breakdown of those projects by phase:

FLORIDA DGS PROJECTS: SEPTEMBER 1983

Phase	Number of Projects	Project Value
Programming	16	$ 3,320,368
Design	179	139,145,734
Bid	24	14,321,569
Construction	118	156,871,149
Completed	24	3,984,498
TOTAL	361	$361,643,318

Source: Florida Department of General Services

In the period from 1975 to 1983, the Department of General Services awarded 1,166 A/E contracts with total fees of $55 million for projects with total estimated construction costs of $875 million. For new construction projects, fees[1] averaged 7.4 percent for projects with estimated construction costs under $500,000 and 4.5 percent for projects with estimated construction costs in the $30-40 million range. The following charts show the distribution of fees on projects between 1975-83.[2]

FLORIDA DEPARTMENT OF GENERAL SERVICES

Distribution of Fees
New Construction*
1975-83

Estimated Construction Cost	No. of Projects Awarded	Total Estimated Construction Cost (in thousands)	Total Lump Sum Fees	Percent of Estimated Construction Cost
500,001- 1,000,000	53	$ 39,271	$ 2,603,971	6.6%
1,000,001- 2,000,000	41	62,590	3,755,013	6.0
2,000,001- 3,000,000	15	33,672	1,898,742	5.6
3,000,001- 4,000,000	18	61,410	4,183,037	6.8
4,000,001- 5,000,000	9	39,213	2,552,996	6.5
5,000,001-10,000,000	29	195,203	11,519,001	5.9
10,000,001-20,000,000	7	88,787	4,363,242	4.9
20,000,001-30,000,000	2	40,185	2,089,638	5.2
30,000,001-40,000,000	1	33,228	1,495,262	4.5
TOTAL	175	$593,559	$34,460,902	Avg. 5.8%

*Excludes projects under $500,000 in estimated construction cost (183 projects).

FLORIDA DEPARTMENT OF GENERAL SERVICES

Distribution of Fees
Alterations/Renovations*
1975-83

Estimated Construction Cost	No. of Projects Awarded	Total Estimated Construction Cost (in thousands)	Total Lump Sum Fees	Percent of Estimated Construction Cost
250,001- 500,000	129	$ 44,292	$ 3,625,643	8.1%
500,001-1,000,000	53	35,998	2,078,410	5.7
1,000,001-2,000,000	35	50,107	3,329,350	6.6
2,000,001-3,000,000	9	21,939	1,590,139	7.2
3,000,001-4,000,000	2	6,504	500,254	7.6
4,000,001-5,000,000	2	8,712	577,448	6.6
5,000,001-6,000,000	2	11,157	739,063	6.6
6,000,001-7,000,000	1	6,317	315,809	4.9
TOTAL	233	$185,026	$12,756,116	Avg. 6.9%

*Excludes projects under $250,000 in estimated construction (575 projects).

Source: Florida Department of General Services

Time to Award A/E Contracts. The Department of General Services awards A/E contracts in approximately 2 months (70 days) or less from date of initial advertisement to final approved selection.

Level of Competition. A minimum of 20 firms are serious competitors for each DGS project.

Interviews with State Officials. In interviews held between October 1983 and March 1984, Department of General Services officials were found to be pleased with the A/E selection process established by the Consultants' Competitive Negotiation Act and with A/Es and their work.

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[1]Fees apply only to basic services and exclude reimbursement for extra services, such as clerks-of-the-work.

[2]New construction projects under $500,000 and alterations/renovations under $250,000 in estimated construction costs are excluded for comparability with Maryland data.

Total Costs of the A/E Selection Process

The cost of A/E selection for the Florida Department of General Services can be estimated by including the cost of A/E fees and DGS and user agency administrative costs. These factors can be expressed in the following equation:

$$\frac{\text{A/E Fees} + \text{DGS and User Agency Administrative Costs}}{\text{Total Estimated Construction Costs}} = \text{Total Costs (As a percent of estimated construction costs)}$$

Total A/E fees and administrative costs for all nine years are used in the formula and expressed as a percentage of total estimated construction costs of projects for the nine-year period.

1. A/E Fees $55,336,000

2. Administrative Costs . . . . . $ 3,216,000
   General Services $2,148,000
   User Agencies $1,068,000

   Total . . .$58,552,000

$$\frac{58,552,000}{875,000,000} = \frac{6.7}{100}$$

The costs involved in the A/E portion of the capital construction process in the Florida Department of General Services, therefore, are estimated to be 6.7 percent of estimated construction costs of the projects for which A/E services were procured between 1975 and 1983.

Total Estimated Construction Costs. Total estimated construction costs for projects in the nine-year period were $875 million.

A/E Fees. Total A/E fees through the nine-year period were $55,336,000.

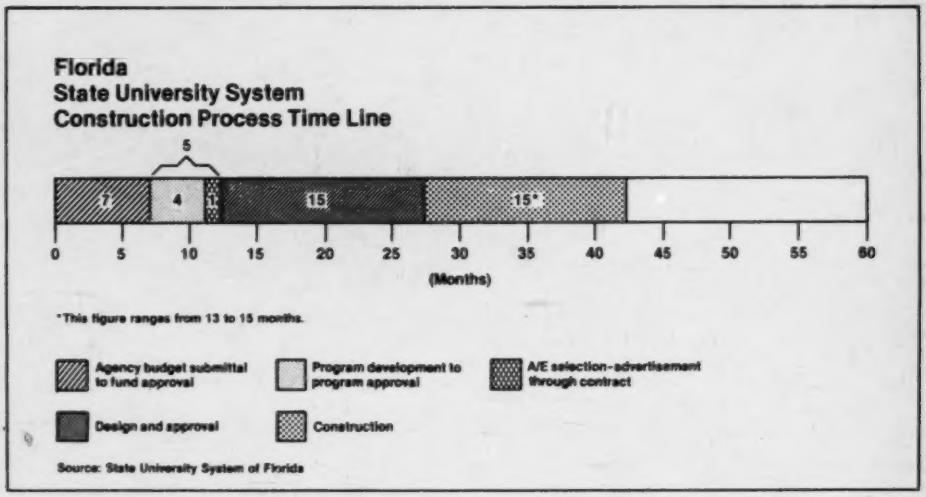
Administrative Costs. The Florida Department of General Services' administrative costs for the A/E portion of the capital construction cycle are assumed to be 20 percent of the department's budget. User agencies' costs are estimated to be 50 percent of General Services' costs.

Cost to Unsuccessful Competitors. In general, the minimal cost of preparing SF 254s and SF 255s is the only cost to unsuccessful competitors in Florida. However, competing firms' costs may be increased if lengthy interviews are included in the selection process.

FLORIDA'S STATE UNIVERSITY SYSTEM

The Capital Construction Process

In 1980, the State University System assumed responsibility for the construction of all facilities for state universities. While the SUS operates under the CCNA, there are some differences between its capital construction program and that of the Department of General Services. The following information was derived from material furnished by the State University System. For purposes of comparison, the capital construction process has been divided into three major phases: 1) planning; 2) A/E selection, and design and approval; and 3) construction.



The entire capital construction process for the State University System, from submission of capital budget request to user acceptance of the building, averages a little over three years.

Planning. The State University System Board of Regents maintains an overall academic plan and master plans for SUS facilities, and the State Department of Education (DOE) Office of

Educational Facilities surveys the universities for estimated building needs every five years.

Each of the nine universities in the State University System submits its own three-year building plan; the SUS Board of Regents justifies proposed projects and relates them to existing facilities and to DOE survey recommendations. Staff of the board review all the project requests within the framework of available funding, as estimated by DOE and the governor's revenue estimating staff, determine relative priority order of the projects and compile the total SUS three-year plan.

The proposed plan is reviewed, in turn, and is subject to amendment by a committee of university vice presidents, the Council of University Presidents and the Board of Regents. After board review, the universities develop building programs for approved first-year projects.

Before being forwarded to the Florida legislature, the three-year plan receives further review from DOE and the commissioner of education. The proposed projects must be approved by the legislature and signed by the governor before implementation.

Finally, after the plan has been signed into law and appropriations have been made, the universities' completed building programs are sent to the governor's Budget Office for approval. At this point, the DOE Office of Educational Facilities gives encumbrance authorization and the A/E selection procedure can begin.

On average, seven months elapse between agency budget submissions and fund approval; after funds are approved, it takes five months to develop programs and receive final program approval. The total planning cycle from preparation and submission of capital budget requests to SUS approval of completed building programs, takes approximately 11 months.

A/E Selection, and Design and Approval. Selection of the A/E, from public announcement to contract negotiation, averages just over one month. The final details of the program are discussed in a pre-design conference.

The design and approval cycle averages 15 months. The total time involved in the A/E selection and design and approval phases, from advertisement to approval of construction drawings, is approximately 16 months.

Construction. The first phase of the construction cycle is the selection of a general contractor. That selection, which is

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done on a competitive bidding basis, using the detailed plans and specifications prepared by the A/E, takes approximately one month to complete. After that point, total construction time up to user acceptance of the building takes between 13 and 15 months.

Administrative Costs of the A/E Selection Process

A complete review of department budgets to determine the total administrative costs of the A/E selection process is not within the scope of this study. However, the following information on State University System personnel and budget involved in the A/E selection process gives some indication of the cost.

In 1984, with a total of 10 personnel and a budget of approximately $245,000, the SUS administered a construction program of $64 million in estimated construction costs. In constant dollars, the administrative budget dropped 3.5 percent between 1980 and 1984.

State University System
Capital Programs
Personnel and Budget

Year	Number of Staff*	Budget	Budget in constant (1972) dollars**
1980	10 (9 professionals/ 1 clerical)	$203,000	$114,000
1984	10 (9 professionals/ 1 clerical)	$245,000	$110,000

* There are both full and part time. Some have teaching duties. It is estimated that 25 percent of their time is dedicated to capital programs.

** Constant dollars are derived by using the implicit price deflator for the gross national product as a measure of inflation (Source: U.S. Department of Commerce, Bureau of Economic Analysis, National Income and Product Accounts).

The total administrative costs of the Florida State University System A/E procurement process are estimated at $364,000 per year or $1,456,000 for the four-year period from 1980 to 1983.

Overview of Projects: State University System

In the period between 1980 and 1983, the Florida State University System awarded 74 A/E contracts under the system established by the Consultants' Competitive Negotiation Act and the SUS administrative procedures. The awards totaled $13.7 million on projects with total estimated construction costs of $191 million. During those years, A/E fees[1] averaged 6.4 percent for new construction and 6.9 percent for alterations/renovations. Fees for new construction averaged 8 percent for projects with an estimated construction cost of $500,000 to $1 million, and 4.6 percent on jobs in the $3-4 million range. On alterations/renovations, fees averaged 7.3 percent on projects under $1 million and 6.3 percent on projects in the $3-4 million range. The following charts show the distribution of fees on new construction and alterations/renovations.[2]

State University System of Florida

Distribution of Fees
New Construction*
1975-83

Estimated Construction Cost	No. of Projects Awarded	Total Estimated Construction Cost (in thousands)	Total Lump Sum Fees	Percent of Estimated Construction Cost
500,000- 1,000,000	7	$ 5,339	$ 428,080	8.0%
1,000,001- 2,000,000	7	9,564	672,953	7.0
2,000,001- 3,000,000	5	12,023	862,602	7.1
3,000,001- 4,000,000	4	14,548	673,437	4.6
4,000,001- 5,000,000	5	21,933	1,440,037	6.6
5,000,001-10,000,000	4	25,065	1,734,820	6.9
10,000,001-20,000,000	1	14,000	782,000	5.6
20,000,001-30,000,000	0			
30,000,001-40,000,000	0			
TOTAL	33	$102,472	$6,593,929	Avg. 6.4%

*Excludes projects under $500,000 and over $40 million in estimated construction costs.

Source: State University System of Florida

State University System of Florida

Distribution of Fees
Alterations/Renovations*
1975-83

Estimated Construction Cost	No. of Projects Awarded	Total Estimated Construction Cost (in thousands)	Total Lump Sum Fees	Percent of Estimated Construction Cost
250,001- 500,000	6	$ 2,347	$ 172,360	7.3%
500,001-1,000,000	5	3,442	249,534	7.3
1,000,001-2,000,000	8	11,180	798,116	7.1
2,000,001-3,000,000	3	7,606	537,385	7.1
3,000,001-4,000,000	3	10,688	682,795	6.3
4,000,001-5,000,000	0	———	———	———
5,000,001-6,000,000	0	———	———	———
6,000,001-7,000,000	0	———	———	———
TOTAL	31	$35,263	$2,440,190	Avg. 6.9%

*Excludes projects under $250,000 and over $7 million in estimated construction costs.

Source: State University System of Florida

Time to Award A/E Contracts. The State University System generally awards A/E contracts in under two months from date of initial advertisement to final approved selection.

Level of Competition. On average, at least 20 firms are serious competitors for each of the State University System projects. This figure is constant over the 1980-83 period.

Interviews with State Officials. Interviews with key personnel in the State University System were held in October 1983 and March 1984. Overall, the officials interviewed are pleased with the A/E selection process established by the Consultants' Competitive Negotiation Act, and are pleased with the A/Es and their work. Some other observations and details of the process were noted:

- Project Files. Complete project files are maintained by the SUS Office of Capital Programs, which publishes a tri-monthly Monitoring Report giving historical data on current projects. The record keeping is thorough and accurate.

- Citizen Advisory Committee. The SUS Board of Regents convenes a group of selected contractors, A/Es and university administrators every six months to discuss areas of mutual concern. Subjects include specifications, professional liability and fees. It appears that the university construction group has excellent relations with the private sector participants.

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[1]Fees apply only to basic services and exclude reimbursement for extra services, such as clerks-of-the-work.

[2]New construction projects under $500,000 and alterations/renovations under $250,000 in estimated construction costs are excluded for comparability with Maryland data.

Total Cost of the A/E Selection Process

The cost of A/E selection for Florida's State University System can be estimated by including the cost of A/E fees and SUS and user agency administrative costs. These factors can be expressed in the following equation:

$$\frac{\text{A/E Fees} + \text{SUS and User Agency Administrative Costs}}{\text{Total Estimated Construction Costs}} = \text{Total Costs (As a percent of estimated construction costs)}$$

Total A/E fees and administrative costs for all four years are used in the formula and expressed as a percentage of total estimated construction costs of projects for the four-year period.

1. A/E Fees $13,696,000

2. Administrative Costs ..... $ 269,000
   University System. . . $179,000
   User Agencies . . . . $ 90,000

   Total . . $13,965,000

$$\frac{13,965,000}{191,093,000} = \frac{7.3}{100}$$

The costs involved in the A/E portion of the capital construction process in the State University System, therefore, are estimated to be 7.3 percent of estimated construction costs of the projects for which A/E services were procured between 1980 and 1983.

Total Estimated Construction Costs. Total estimated construction costs for projects in the three-year period were $191,093,000.

A/E Fees. Total A/E fees through the three-year period were $13,696,000.

Administrative Costs. Florida's State University System's administrative costs for the A/E portion of the capital construction cycle are assumed to be 20 percent of the department's budget. User agencies' costs are estimated to be 50 percent of the University System's costs.

Cost to Unsuccessful Competitors. In general, the minimal cost of preparing SF 254s and SF 255s is the only cost to unsuccessful competitors in Florida. However, competing firms' costs may be increased if lengthy interviews are included in the selection process.

Conclusions

Based upon a review of the Florida A/E selection system and the data furnished by the Department of General Services and the State University System, the following conclusions can be drawn:

1. Administration and Cost. Florida's system of competitive selection and competitive negotiation, as practiced by the State University System and the Department of General Services, is efficient and well-managed. The planning and selection processes appear to proceed smoothly and to adhere closely to agency timetables for project completion. The A/E portion of the capital construction process, from the point that funds are approved to the beginning of the actual construction cycle, is completed in 22 months by the Florida Department of General Services and in 20 months by the State University System. Actual A/E selection time takes approximately 2 months in Florida.

2. A/E Fees. A/E fees are considered fair and reasonable by both state personnel and A/Es. Both the University System and the Department of General Services rely heavily on fee curves in negotiating contracts with A/Es.

3. Basis of A/E Selection. A/E awards, as intended by law, are made strictly on the basis of the A/Es' qualifications and suitability for a particular project. Once the initial selection is made, a fair and reasonable price is negotiated with the highest-ranking firm. It is extremely rare for the state to be unable to negotiate an equitable fee with the top-ranked firm.

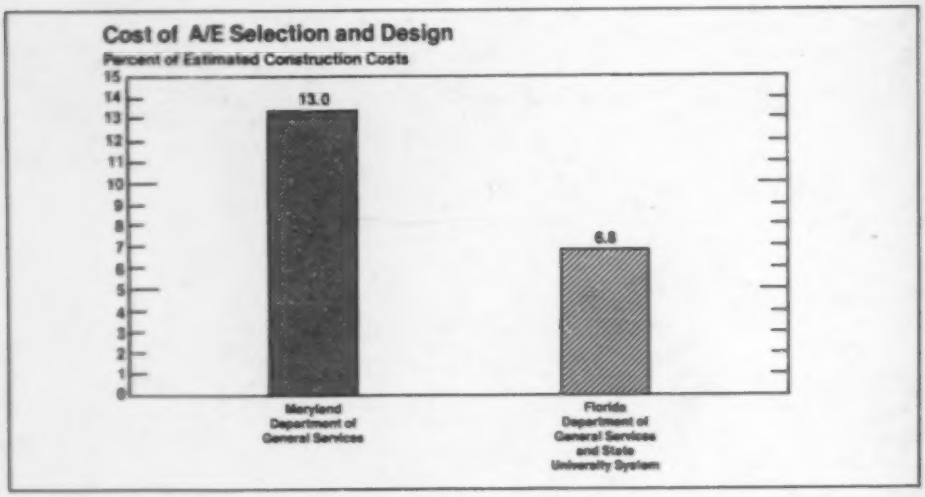
4. User Agency and A/E Evaluations. The A/E selection process is viewed favorably by DGS and SUS staff. A/Es in Florida appear to be satisfied with the selection process.

CONCLUSIONS: A/E SELECTION IN MARYLAND AND FLORIDA

1. Maryland's A/E selection process is significantly more time-consuming and expensive than Florida's. In Maryland, the necessity of preparing detailed programs on which A/Es can base price proposals results in added expense to the state in the form of administrative staff, time delays and consultant costs. These additional system costs are unique to the Maryland process.

Total costs of the A/E portion of Maryland's capital construction process average 13 percent of estimated construction costs. Total costs in Florida average 6.7 percent of estimated construction costs for the Florida Department of General Services and 7.3 percent for the State University System. A/E fees are lower in Maryland than in Florida; however, the added costs of the Maryland process far outweigh the savings in A/E fees that result from a process in which the state develops detailed programs and A/E selections are made on the basis of both price and technical competence.

The following chart shows the comparative costs of the A/E portion of the capital construction process in Maryland and Florida.



The Maryland A/E selection system, because of its requirement that competing firms submit elaborate technical proposals accompanied by fixed prices, also results in extraordinary costs to the A/E firms that compete but are not awarded contacts. Although not direct costs to the state, as operating expenses of the firms, those costs are eventually passed on to consumers of A/E services.

a. Maryland's A/E selection process requires a significantly larger administrative staff and budget than Florida's. The increased administrative costs in Maryland result from the necessity of preparing detailed programs on which A/Es can submit price proposals.

Since Maryland's law requiring selection based on price and technical proposals went into effect, there has been an 11.6 percent increase in personnel and a 17.9 percent increase in the budget (in constant dollars) of the DGS Office of Engineering and Construction, which participates in the A/E selection and capital construction process. In 1983, with a total of 96 personnel and a budget of $2.5 million, the Maryland DGS' Office of Engineering and Construction administered a capital construction program that averages $65 million[1] in estimated construction costs annually. In comparison, the Florida Department of General Services which, like the Maryland DGS, administers procurements for many state agencies had a total of 51 personnel and an annual budget of $1.6 million in 1983 to handle a capital construction program that averages over $100 million.[1] In the 1975-83 period, the Maryland DGS awarded 174 A/E contracts on projects worth a total of $518 million in estimated construction costs; in the same time period the Florida DGS awarded 1,166 contracts on projects totaling $875 million in estimated construction costs.

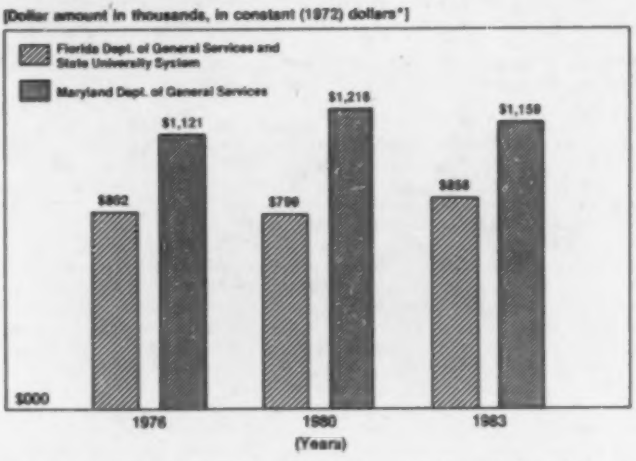
Florida's State University System, unlike Maryland's university system, administers its capital construction program independently. The size of Florida's University System program ($64 million) is roughly the same as the Maryland DGS' program, but the administrative staff and budget of Florida's University System is only one-tenth the size of that of the Maryland Department of General Services. In the period between 1980 (when the the University System began procuring A/E services independently) and 1983, the State University System of Florida awarded 74 A/E contracts on projects totaling $191 million in estimated construction costs.

In terms of the effectiveness of administration, both the Maryland and Florida A/E procurement processes appear to be open and well-managed.

The following chart illustrates the administrative budget of Maryland's and Florida's capital construction programs.

Comparative Capital Construction Program
Administrative Budget
1976-1983

[Dollar amount in thousands, in constant (1972) dollars*]



Source: Maryland Department of General Services; Florida Department of General Services and State University System

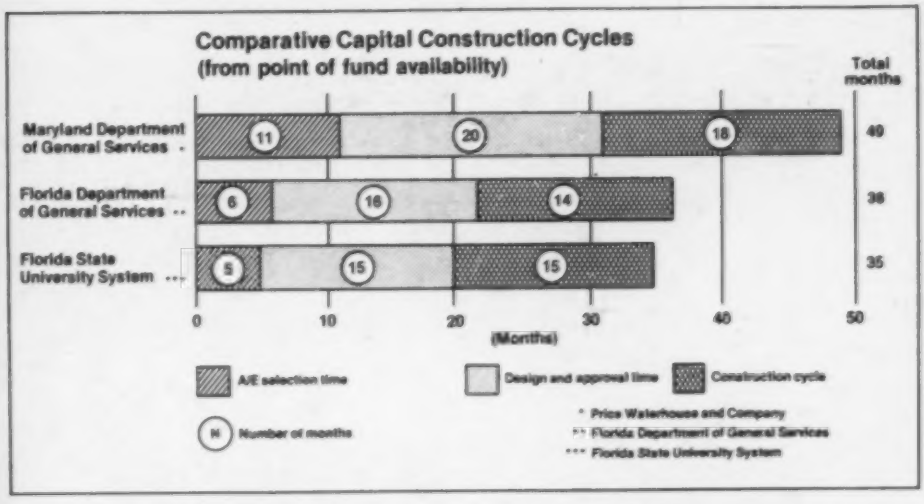
*Constant dollars are derived by using the implicit price deflator for the gross national product as a measure of inflation (Source: U.S. Department of Commerce, Bureau of Economic Analysis, National Income and Product Accounts).

b. Maryland's A/E selection process takes considerably longer to complete than Florida's. The total delay relating to the A/E portion of the capital construction process in Maryland is more than 9 months. The delay occurs while the detailed program descriptions are being prepared, during the actual selection process and during the design and approval phase.

The Maryland Department of General Services completes the A/E portion of the capital construction process, from the point that funds are approved to the beginning of the actual construction cycle, in 31 months. The same steps are completed in 22 months

by the Florida Department of General Services and in 20 months by the State University System of Florida. From the point that funds are approved in Maryland, it takes 11 months to prepare program descriptions and select the A/E.

The comparative capital construction cycles in Maryland and Florida are detailed in the following chart.



2. Florida selects A/Es on the basis of technical competence; contrary to Maryland law, price appears to be the dominant selection factor in Maryland. In Florida's traditional qualifications-based process, initial A/E selection is made on the basis of demonstrated qualifications and competence. The agencies then negotiate an equitable fee with the most qualified firm, relying heavily on fee schedules.

By law Maryland considers both price and technical competence in the award of state contracts, but it appears that price is becoming the dominant factor. Of the last 40 projects awarded by the Maryland Department of General Services prior to June 1983, 33 (83 percent) went to the firm with the lowest price proposal.

3. User agencies in both states are generally pleased with their state's A/E selection process, but A/Es in Maryland are resentful of the system. Most A/Es who design state projects in

Maryland dislike the system, which they feel rewards them inadequately. Accordingly, Maryland state projects are not attractive to many firms, who view them as work of last resort.

User agencies in both states are generally pleased with both the A/E selection system and the A/Es work.

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[1]This figure represents the average annual dollar value in estimated construction costs of projects for which A/E selections were made between 1975 and 1983. At any one time, the state agency would be administering projects in all phases of the planning, design and construction process, and the total estimated construction costs for all of those projects would be much greater.

APPENDIX A. MARYLAND LAW: PROCUREMENT OF ARCHITECTURAL AND ENGINEERING SERVICES

§ 9-210. Recommendation of award to Board of Public Works.

(a) *Duty of General Selection Board.* — The General Selection Board shall recommend to the Board of Public Works the person from which the requested architectural or engineering services should be procured. Its recommendation shall be made in accordance with § 9-209 of this subtitle.

(b) *Assurance of financial capacity.* — The General Selection Board shall assure that the recommended person has the financial capacity to provide the services and to protect this State from errors and omissions that might arise from the direct performance of the services or the performance of the services by third parties relying on the completed design or work product.

(c) *Statement of reasons for selection.* — With each recommendation, the General Selection Board shall submit a statement of the reasons for the selection. This statement serves as a public notice of the selection. (1977, ch. 13, §§ 1, 3; 1980, ch. 775, § 18.)

Editor's note. — Section 18, ch. 775, Acts 1980, effective July 1, 1981, transferred article 41, § 231W, to be article 21, § 9-210, substituted "General Selection Board" for "Board" in each subsection and substituted "§ 9-209" for "§ 231V" in the second sentence in subsection (a).

§ 9-211. Truth-in-negotiation certificate; adjustments to contract.

(a) *Truth-in-negotiation certificate required.* — A person may not be awarded under this subtitle any contract costing over $25,000 unless the person has executed a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current as of the time of contracting.

(b) *Price adjustments.* — (1) The certificate shall provide that the original price of the contract and any additions to the contract will be adjusted to exclude any significant sums if the General Selection Board determines that the price was increased due to inaccurate, incomplete, or noncurrent wage rates or other factual unit costs.

(2) The adjustment to the contract shall be made within 1 year after the end of the contract. (1977, ch. 13, §§ 1, 3; 1980, ch. 775, § 18.)

Editor's note. — Section 18, ch. 775, Acts 1980, effective July 1, 1981, transferred article 41, § 231X, to be article 21, § 9-211, and substituted "General Selection Board" for "Board" in paragraph (1) of subsection (b).

§ 9-212. Affidavit of noncollusion.

A person may not be awarded a contract unless the person submits, with the price quotation, and [an] affidavit of noncollusion. (1977, ch. 13, §§ 1, 3; 1980, ch. 775, § 18.)

§ 9-118. Short titles.

(a) This subtitle may be cited as the Maryland Procurement of Architectural and Engineering Services Act — Transportation Agencies.

(b) This subtitle and the Maryland Procurement of Architectural and Engineering Services Act — General Using Authorities may be cited jointly as the Maryland Architectural and Engineering Services Act. (1977, ch. 13, § 2; 1980, ch. 775, § 17.)

Editor's note. — Section 17, ch. 775, Acts 1980, effective July 1, 1981, transferred TR § 2-318 to be article 21, § 9-118.

Subtitle 2. General Using Authorities — Architectural-Engineering Services.

§ 9-201. Definitions.

(a) *In general.* — In this subtitle the following words have the meanings indicated.

(b) *Contract.* — "Contract" means any using authority contract for architectural or engineering services.

(c) *Department.* — "Department" means the Department of General Services.

(d) *Person.* — "Person" includes:

(1) An individual, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind and any partnership, firm, association, public or private corporation, or other entity; and

(2) Unless the context requires otherwise, this State, any county, municipal corporation, or other political subdivision of this State, and any of their agencies or units.

(e) *Secretary.* — "Secretary" means the Secretary of General Services.

(f) *Using authority.* — "Using authority" means any using agency, as defined in § 1-101 (s) of this article, other than the Department of Transportation, its units, or the Maryland Transportation Authority. (1977, ch. 13, §§ 1, 3; 1980, ch. 775, § 18.)

Editor's note. — Section 18, ch. 775, Acts 1980, effective July 1, 1981, transferred article 41, § 231N, to be article 21, § 9-201, eliminated the subsection (b) defining "Board," redesignated the subsections (c), (d) and (e) in § 231N to be subsections (b), (c) and (d) in § 9-201, added subsection (e) in § 9-201 and substituted "using agency, as defined in § 1-101 (s)" for "using authority, as defined in § 231G" in subsection (f).

§ 9-202. General Selection Board established.

There is a General Professional Services Selection Board in the Department, referred to in this subtitle as the General Selection Board. (1977, ch. 13, §§ 1, 3; 1980, ch. 775, § 18.)

Editor's note. — Section 18, ch. 775, Acts 1980, effective July 1, 1981, transferred article 41, § 231-O, to be article 21, § 9-202, and added "referred to in this subtitle as the General Selection Board" at the end of the section.

§ 9-203. Composition of General Selection Board; qualifications; tenure.

(a) *In general.* — The General Selection Board consists of four permanent members and one temporary member.

(b) *Permanent members.* — (1) The four permanent members of the General Selection Board are:

(i) The Secretary, ex officio, or his designee;

(ii) One member appointed from the Department by the Governor on recommendation of the Secretary, which member serves at the pleasure of the Governor; and

(iii) Two members appointed from the general public by the Governor, at least one of whom is not an architect or engineer and each of whom serves a term of 4 years and until his successor is appointed and qualifies.

(2) On recommendation of the Secretary, the Governor may appoint an alternate member to serve in the absence of the regular member appointed under this subsection from the Department.

(c) *Temporary member.* — The head of the using authority that is presenting a request to the General Selection Board shall be a temporary member of the General Selection Board. The temporary member serves only for the purposes of considering and acting on the request of the using authority by which he is appointed. (1977, ch. 13, §§ 1, 3; 1980, ch. 775, § 18.)

Editor's note. — Section 18, ch. 775, Acts 1980, effective July 1, 1981, transferred article 41, § 231P, to be article 21, § 9-203, and substituted "General Selection Board" for "Board" in subsection (a), in paragraph (1) in subsection (b) and twice in subsection (c).

§ 9-204. Removal of General Selection Board members; vacancies; conflicts of interest.

(a) *Removal of members.* — The members of the General Selection Board may be removed by the Governor for misconduct, incompetency, neglect of duty, or other sufficient cause.

(b) *Vacancies.* — A permanent member appointed to fill a vacancy in an unexpired term serves only for the remainder of that term.

(c) *Conflicts of interest.* — A member of the General Selection Board may not participate in any matter before the General Selection Board in which:

(1) The member has an interest; or

(2) Any other person, other than a using authority, has an interest, if the member is or within the previous 12 months has been associated with the other person. (1977, ch. 13, §§ 1, 3; 1980, ch. 775, § 18.)

Editor's note. — Section 18, ch. 775, Acts 1980, effective July 1, 1981, transferred article 41, § 231Q, to be article 21, § 9-204, and substituted "General Selection Board" for "Board" in subsection (a) and twice in the first paragraph in subsection (c).

§ 9-205. Rules and regulations.

(a) *Adoption.* — The General Selection Board shall adopt rules and regulations to carry out the provisions of this subtitle.

(b) *Similarity with those of Transportation Board.* — The rules and regulations adopted by the General Selection Board under this section and those adopted by the Transportation Professional Services Selection Board under § 9-105 of this article shall provide for substantially the same procedures. (1977, ch. 13, §§ 1, 3; 1980, ch. 775, § 18.)

Editor's note. — Section 18, ch. 775, Acts 1980, effective July 1, 1981, transferred article 41, § 231R, to be article 21, § 9-205, substituted "General Selection Board" for "Board" in both subsections and substituted "§ 9-105 of this article" for "§ 2-305 of the Transportation Article" in subsection (b).

§ 9-206. Advisory services of General Selection Board.

On request of a school board or political subdivision of this State, the General Selection Board may provide advisory services in procuring architectural and engineering services. The school board or political subdivision shall reimburse the General Selection Board for the costs of these services. (1977, ch. 13, §§ 1, 3; 1980, ch. 775, § 18.)

Editor's note. — Section 18, ch. 775, Acts 1980, effective July 1, 1981, transferred article 41, § 231S, to be article 21, § 9-206, and substituted "General Selection Board" for "Board" in both sentences.

§ 9-207. Request to General Selection Board for professional services required.

(a) *Presentment of request to Board.* — A using authority that desires to procure architectural or engineering services costing over $25,000 shall present the request to the General Selection Board at a public meeting.

(b) *Public notice.* — Reasonable and timely public notice shall be given of any request presented to the General Selection Board.

(c) *Lack of in-house resources as prerequisite.* — Before the General Selection Board approves any request for architectural or engineering services, it shall be satisfied that the services cannot be provided feasibly or economically by existing in-house resources. (1977, ch. 13, §§ 1, 3; 1980, ch. 775, § 18.)

Editor's note. — Section 18, ch. 775, Acts 1980, effective July 1, 1981, transferred article 41, § 231T, to be article 21, § 9-207, and substituted "General Selection Board" for "Board" in all three subsections.

§ 9-208. Announcement of approval of request; furnishing of report.

(a) *Public announcement of approval.* — (1) The General Selection Board shall require uniform and consistent public announcements of all its approvals of requests for the procurement of architectural or engineering services.

(2) In addition, an announcement of the approval of each request shall be mailed to each person that requests notification.

(b) *Content of announcement.* — Each announcement shall:

(1) Describe generally the architectural and engineering services to be procured; and

(2) Indicate how interested persons may receive information about the procurement.

(c) *Comprehensive report to be furnished.* — On request, the General Selection Board shall give each interested person a comprehensive description of the nature and scope of the professional services to be procured. The using authority making the procurement request shall prepare the description. (1977, ch. 13, §§ 1, 3; 1980, ch. 775, § 18.)

Editor's note. — Section 18, ch. 775, Acts 1980, effective July 1, 1981, transferred article 41, § 231U, to be article 21, § 9-208, and substituted "General Selection Board" for "Board" in paragraph (1) of subsection (a) and in subsection (c).

§ 9-209. Requirements for award; waiver of requirements.

(a) *Requirements.* — (1) The recommendation of the General Selection Board for the procurement and award of each contract for architectural and engineering services costing over $25,000 shall:

(i) Be made on a competitive basis; and

(ii) Include an evaluation of technical and price proposals from two or more persons.

(2) Neither the technical proposal nor the price proposal may be the sole criterion in making a recommendation on a competitive basis.

(b) *Waiver.* — (1) The General Selection Board may waive the requirements of subsection (a) of this section if:

(i) It determines in writing that the architectural and engineering services cannot be defined so completely as to lend themselves to the procedures set forth in subsection (a) of this section;

(ii) The public health and safety is endangered after a natural disaster or act of God;

(iii) A state of emergency is declared by the Governor; or

(iv) A bona fide single source of supply or a proprietary product or process is required.

(2) Each waiver and the reasons for it shall be:

(i) Documented and reported to the Legislative Policy Committee within 30 days; and

(ii) Documented and immediately reported to the Maryland Register for printing in the next available issue. (1977, ch. 13, §§ 1, 3; ch. 808, § 2; 1980, ch. 775, § 18.)

Editor's note. — Section 18, ch. 775, Acts 1980, effective July 1, 1981, transferred article 41, § 231V, to be article 21, § 9-209, and substituted "General Selection Board" for "Board" in paragraph (1) of subsection (a) and in paragraph (1) of subsection (b).

Editor's note. — Section 18, ch. 775, Acts 1980, effective July 1, 1981, transferred article 41, § 231Y, to be article 21, § 9-212.

§ 9-213. Cost-plus-a-percentage-of-cost contracts.

(a) *Contracts prohibited.* — The cost-plus-a-percentage-of-cost type of contract may not be used.

(b) *Certain fee schedules prohibited.* — Fee schedules that are based on a percentage of construction costs of contracts resulting from completed designs prepared by architectural or engineering firms may not be used. (1977, ch. 13, §§ 1, 3; 1980, ch. 775, § 18.)

Editor's note. — Section 18, ch. 775, Acts 1980, effective July 1, 1981, transferred article 41, § 231Z, to be article 21, § 9-213.

§ 9-214. Contingent fees prohibited.

(a) *Contract to contain specified prohibition.* — Each contract for architectural or engineering services shall contain a prohibition against contingent fees as follows: "The architect or engineer [as applicable] warrants that he has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the architect or engineer, to solicit or secure this agreement, and that he has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of this agreement."

(b) *Contingent fee prohibited in procuring a contract.* — Unless he is a bona fide employee or agent working for the other person, a person may not offer or agree to solicit or secure for any other person any contract for architectural or engineering services if his fee is contingent on or results from the making of a contract for these services.

(c) *Architects and engineers prohibited from offering contingent fee.* — An architect, engineer, or corporation or partnership of architects or engineers may not offer to pay any fee or other consideration that is contingent on the making of a contract for architectural or engineering services.

(d) *Employee of using authority prohibited from soliciting contract on contingent fee basis.* — An employee of a using authority may not solicit or secure or offer to solicit or secure a contract for architectural or engineering services for which the employee is paid or is to be paid any fee or other consideration contingent on the making of the contract between the using authority and any other person. (1977, ch. 13, §§ 1, 3; 1980, ch. 775, § 18.)

Editor's note. — Section 18, ch. 775, Acts 1980, effective July 1, 1981, transferred article 41, § 231AA, to be article 21, § 9-214.

§ 9-215. Audits.

(a) *Rates subject to post audit.* — (1) The rates of architects and engineers performing services for a using authority are subject to post audit.

(2) If the compensation is over $25,000, all rates used in cost-plus-fixed-fee contracts shall be verified by post audit.

(b) *Audits available to local subdivision.* — On request, any State audit of an architect or engineer providing services for a using authority shall be made available to the procuring authority of any political subdivision of this State, if the procuring authority is considering the architect or engineer for services on a specific project. (1977, ch. 13, §§ 1, 3; 1980, ch. 775, § 18.)

Editor's note. — Section 18, ch. 775, Acts 1980, effective July 1, 1981, transferred article 41, § 231BB, to be article 21, § 9-215.

§ 9-216. Termination of contract.

(a) *Contract may be terminated for violations.* — The Board of Public Works may terminate without liability a contract for architectural or engineering services and may deduct from the contract price or otherwise recover the full amount of any fee, commission, percentage, gift, or consideration paid in violation of this subtitle, if:

(1) There has been any conviction of a crime arising out of or in connection with the procurement of any work to be done or any payment to be made under the contract; or

(2) There has been any breach or violation of:

(i) Any provision of this subtitle; or

(ii) The contract provision against contingent fees required by § 9-214 (a) of this subtitle.

(b) *Payments on termination of contract.* — If a contract is terminated under this section, the architect or engineer:

(1) May be paid only the earned value of the work done to the date of termination, plus termination costs;

(2) Shall refund all profits or fixed fees realized under the contract; and

(3) Is liable for any costs incurred over the maximum amount payable to the architect or engineer under the contract in completing the work undertaken.

(c) *Rights and remedies not exclusive.* — The rights and remedies contained in this section are in addition to any other right or remedy provided by law, and the exercise of any of them is not a waiver of any other right or remedy provided by law. (1977, ch. 13, §§ 1, 3; 1980, ch. 775, § 18.)

Editor's note. — Section 18, ch. 775, Acts 1980, effective July 1, 1981, transferred article 41, § 231CC, to be article 21, § 2-916, and substituted "§ 9-214 (a) of this subtitle" for "§ 231AA of this subtitle" at the end of subparagraph (ii) in paragraph (2) of subsection (a).

§ 9-217. Penalties.

Any person who violates any provision of this subtitle is guilty of a felony and on conviction is subject to a fine not exceeding $20,000 or imprisonment not exceeding 10 years or both. (1977, ch. 13, §§ 1, 3; 1980, ch. 775, § 18.)

Editor's note. — Section 18, ch. 775, Acts 1980, effective July 1, 1981, transferred article 41, § 231DD, to be article 21, § 9-217.

§ 9-218. Short titles.

(a) This subtitle may be cited as the Maryland Procurement of Architectural and Engineering Services Act — General Using Authorities.

(b) This subtitle and the Maryland Procurement of Architectural and Engineering Services Act — Transportation Agencies may be cited jointly as the Maryland Architectural and Engineering Services Act. (1977, ch. 13, §§ 1, 3; 1980, ch. 775, § 18.)

Editor's note. — Section 18, ch. 775, Acts 1980, effective July 1, 1981, transferred article 41, § 231EE, to be article 21, § 9-218.

§ 9-111. Truth-in-negotiation certificate; adjustments to contract.

(a) *Truth-in-negotiation certificate required.* — A person may not be awarded under this subtitle any contract costing over $50,000 unless the person has executed a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current as of the time of contracting.
(1983, ch. 622.)

Effect of amendment. — The 1983 amendment, effective July 1, 1983, substituted "$50,000" for "$25,000" in subsection (a).

As the remainder of the section was not affected by the amendment, it is not set forth above.

Subtitle 2. General Using Authorities—Architectural-Engineering Services.

§ 9-201. Definitions.

(b) *Contract.* — "Contract" means any using authority contract for architectural or engineering services, except contracts for construction inspection services which shall not be covered by this subtitle and shall not be under the jurisdiction of the General Selection Board, provided that such services have been obtained in accordance with the appropriate competitive bidding processes in Title 3 of Article 21.
(1982, ch. 504.)

Effect of amendment. — The 1982 amendment, effective July 1, 1982, added the exception in subsection (b).

As the other subsections were not affected by the amendment, they are not set forth above.

§ 9-203. Composition of General Selection Board; qualifications; tenure; compensation.

(b) *Permanent members.* — (1) The four permanent members of the General Selection Board are:

(i) The Secretary, ex officio, or his designee;

(ii) One member appointed from the Department by the Governor on recommendation of the Secretary, which member serves at the pleasure of the Governor; and

(iii) Two members appointed from the general public by the Governor, at least one of whom is not an architect or engineer and each of whom serves a term of 5 years and until his successor is appointed and qualifies.

(2) On recommendation of the Secretary, the Governor may appoint an alternate member to serve in the absence of the regular member appointed under this subsection from the Department.

(3) The two members appointed from the general public shall be reimbursed for expenses incurred in the performance of their duties in accordance with the

Standard Travel Regulations and shall be paid such per diem compensation for their services as may be provided for in the budget.
(1981, ch. 296.)

Effect of amendment. — The 1981 amendment, effective July 1, 1981, substituted "5 years" for "4 years" in subparagraph (iii) of paragraph (1) of subsection (b), and added paragraph (3) in that subsection.

As the other subsections were not affected by the amendment, they are not set forth above.

§ 9-207. Request to General Selection Board for professional services required.

(a) *Presentment of request to Board.* — A using authority that desires to procure architectural or engineering services costing over $50,000 shall present the request to the General Selection Board at a public meeting.
(1982, ch. 115.)

Effect of amendment. — The 1982 amendment, effective July 1, 1982, substituted "$50,000" for "$25,000" in subsection (a).

As the other subsections were not affected by the amendment, they are not set forth above.

§ 9-209. Requirements for award; waiver of requirements.

(a) *Requirements.* — (1) The recommendation of the General Selection Board for the procurement and award of each contract for architectural and engineering services costing over $50,000 shall:

(i) Be made on a competitive basis; and

(ii) Include an evaluation of technical and price proposals from two or more persons.

(2) Neither the technical proposal nor the price proposal may be the sole criterion in making a recommendation on a competitive basis.

(b) *Waiver.* — (1) The General Selection Board may waive the requirements of subsection (a) of this section if:

(i) It determines in writing that the architectural and engineering services cannot be defined so completely as to lend themselves to the procedures set forth in subsection (a) of this section;

(ii) The public health and safety is endangered after a natural disaster or act of God;

(iii) An emergency is declared by the Governor; or

(iv) A bona fide single source of supply or a proprietary product or process is required.

(2) Each waiver and the reasons for it shall be:

(i) Documented and reported to the Legislative Policy Committee within 30 days; and

(ii) Documented and immediately reported to the Maryland Register for printing in the next available issue. (1977, ch. 13, §§ 1, 3; ch. 808, § 2; 1980, ch. 775, § 18; 1981, ch. 272; 1982, ch. 115.)

APPENDIX B. MARYLAND STATUS REPORT: A/E SELECTION, 1975-83

Effect of amendments. — The 1981 amendment, effective July 1, 1981, substituted "An emergency" for "A state of emergency" at the beginning of subparagraph (iii) in paragraph (1) of subsection (b).

The 1982 amendment, effective July 1, 1982, substituted "$50,000" for "$25,000" in the introductory language of paragraph (1) in subsection (a).

Term "architectural and engineering services" refers not only to services related to the design of a building or other public work, but also to such services as planning studies and feasibility studies, in accordance with the common usage of the term by the engineering and architectural profession, and all services required by law to be performed by qualified architects and engineers. 60 Op. Att'y Gen. 763 (1975).

§ 9-211. Truth-in-negotiation certificate; adjustments to contract.

(a) *Truth-in-negotiation certificate required.* — A person may not be awarded under this subtitle any contract costing over $50,000 unless the person has executed a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current as of the time of contracting.
(1982, ch. 115.)

Effect of amendment. — The 1982 amendment, effective July 1, 1982, substituted "$50,000" for "$25,000" in subsection (a).

As subsection (b) was not affected by the amendment, it is not set forth above.

§ 9-212. Affidavit of noncollusion.

A person may not be awarded a contract unless the person submits, with the price quotation, an affidavit of noncollusion. (1977, ch. 13, §§ 1, 3; 1980, ch. 775, § 18; 1981, ch. 2, § 2.)

Effect of amendment. — The 1981 amendment, effective July 1, 1981, substituted "an" for "and" preceding "affidavit."

§ 9-215. Audits.

(a) *Rates subject to post audit.* — (1) The rates of architects and engineers performing services for a using authority are subject to post audit.

(2) If the compensation is over $50,000, all rates used in cost-plus-fixed-fee contracts shall be verified by post audit.
(1982, ch. 115.)

Effect of amendment. — The 1982 amendment, effective July 1, 1982, substituted "$50,000" for "$25,000" in paragraph (2) of subsection (a).

As subsection (b) was not affected by the amendment, it is not set forth above.

STATE OF MARYLAND

STATUS REPORT

COMPETITIVE SELECTION PROCESS FOR

ARCHITECTS/ENGINEERS

June 30, 1983

(Prepared by Maryland Department of
General Services)

Department of General Services
Initial A/E Appointments
August 6, 1975 thru June 30, 1983

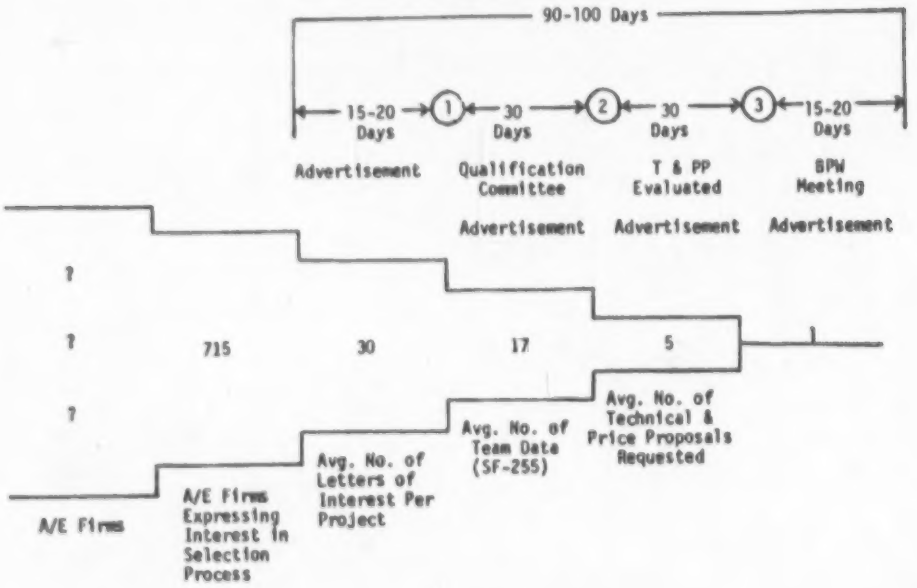
	Lump Sum Fees Office of Engineering and Construction		Lump Sum Fees General Professional Services Selection Board	
	Number of Appointments	Dollar Value	Number of Appointments	Dollar Value
August - December 1975	45	$ 276,227	*16	$ 1,623,324
Calendar Year 1976	135	824,342	16	1,434,711
Calendar Year 1977	94	519,744	17	1,729,771
Calendar Year 1978	68	652,170	15	1,491,673
Calendar Year 1979	69	858,197	36	4,106,297
Calendar Year 1980	43	602,724	25	3,220,271
Calendar Year 1981	30	331,281	22	2,965,727
Calendar Year 1982	39	562,767	20	3,638,976
January 1 - June 30, 1983	33	415,435	7	2,154,373
Total	556	$ 5,042,887	174	$ 22,365,123
	% of Total	% of Total	% of Total	% of Total
	76	18	24	82

*Of the initial 16 Appointment Recommendations of the General Professional Services Selection Board, two were terminated.

Prepared 6/30/83
(By the Maryland DGS)

174 AWARDS ------ $22,365,123

GENERAL PROFESSIONAL SERVICES SELECTION PROCESS
8/6/75 thru 6/30/83



(1) Secretary of DGS Submits Letter of Certification - Project Advertised

(2) 2nd Board Meeting - Request T & PP

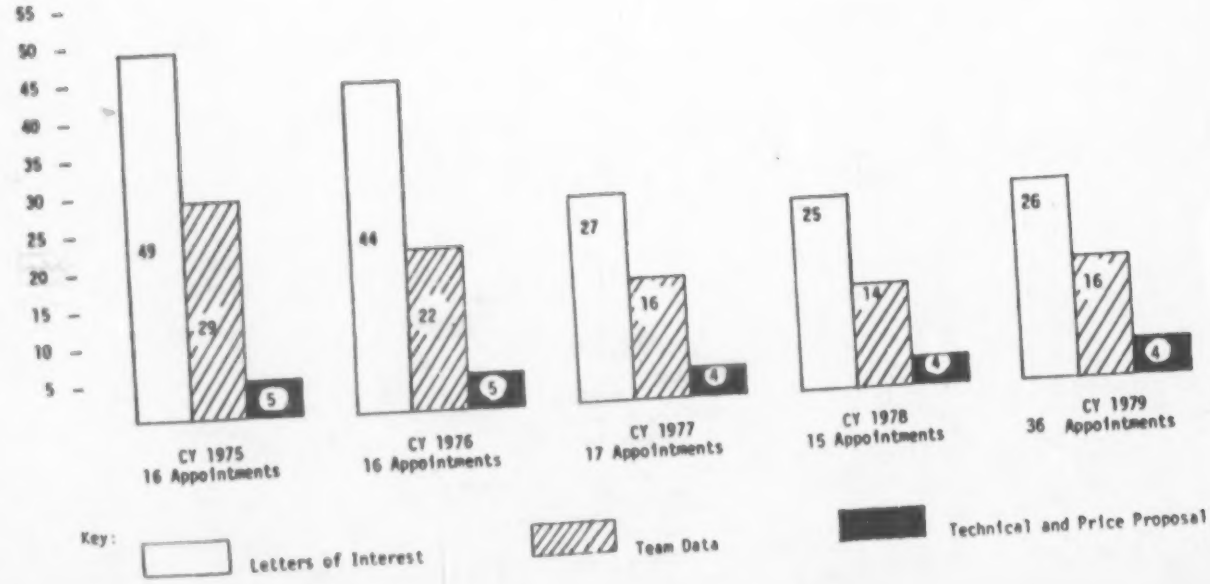
(3) 3rd Board Meeting - A/E Selected

Prepared 6/30/83
(By the Maryland DGS)

GENERAL PROFESSIONAL SERVICES SELECTION BOARD

Average Letters of Interest,
Team Data Submissions &
Technical & Price Proposals

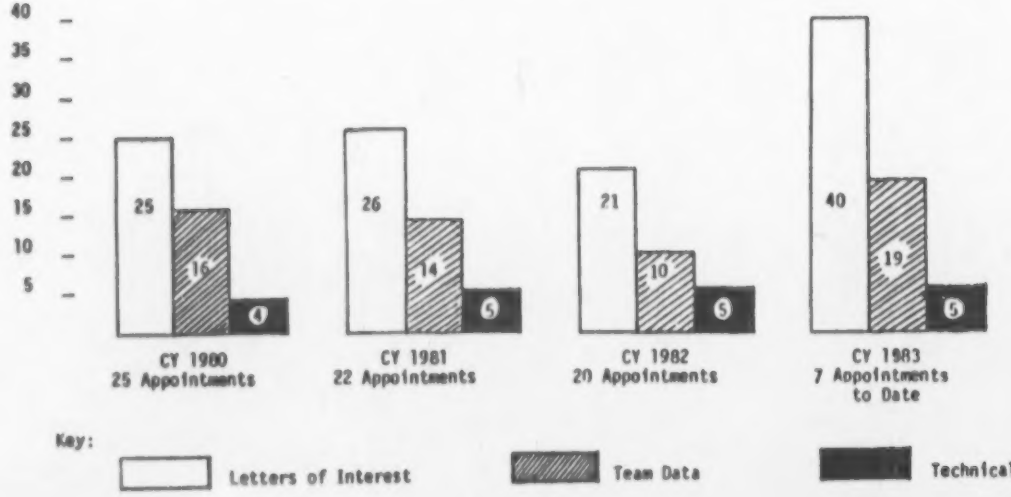
Calendar Years 1975, 1976, 1977, 1978, 1979



GENERAL PROFESSIONAL SERVICES SELECTION BOARD

Average Letters of Interest,
Team Data Submissions &
Technical and Price Proposals

Calendar Years 1980,1981,1982
Calendar Year 1983 to Date

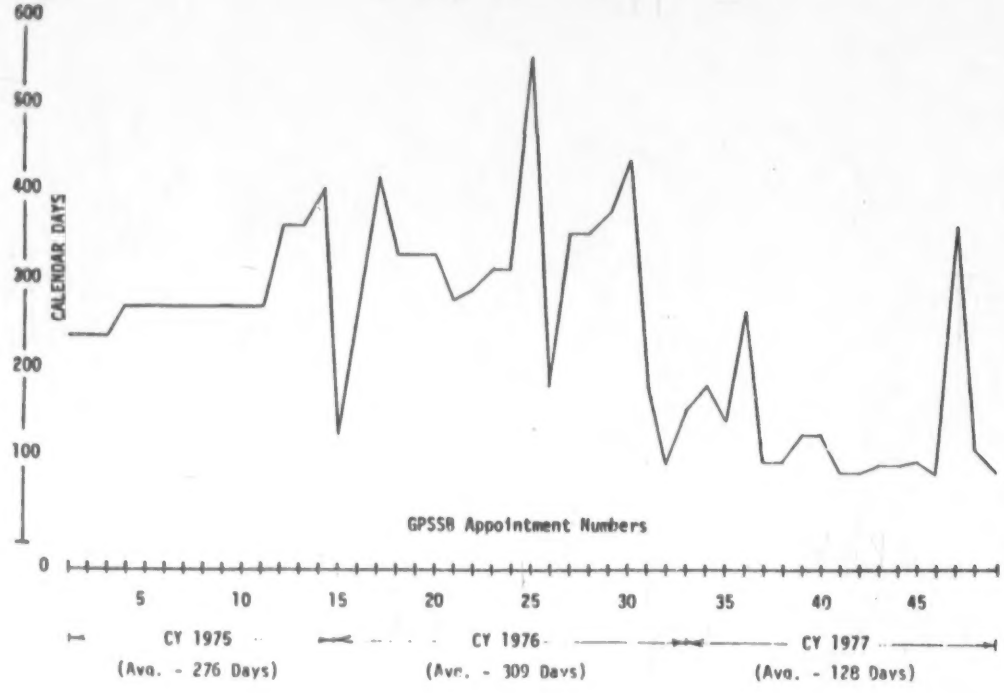


Prepared 6/30/83
(By the Maryland [illegible])

ELAPSED TIME TO AWARD A/E CONTRACT

(From Initial Advertisement to Final BPW Approval)

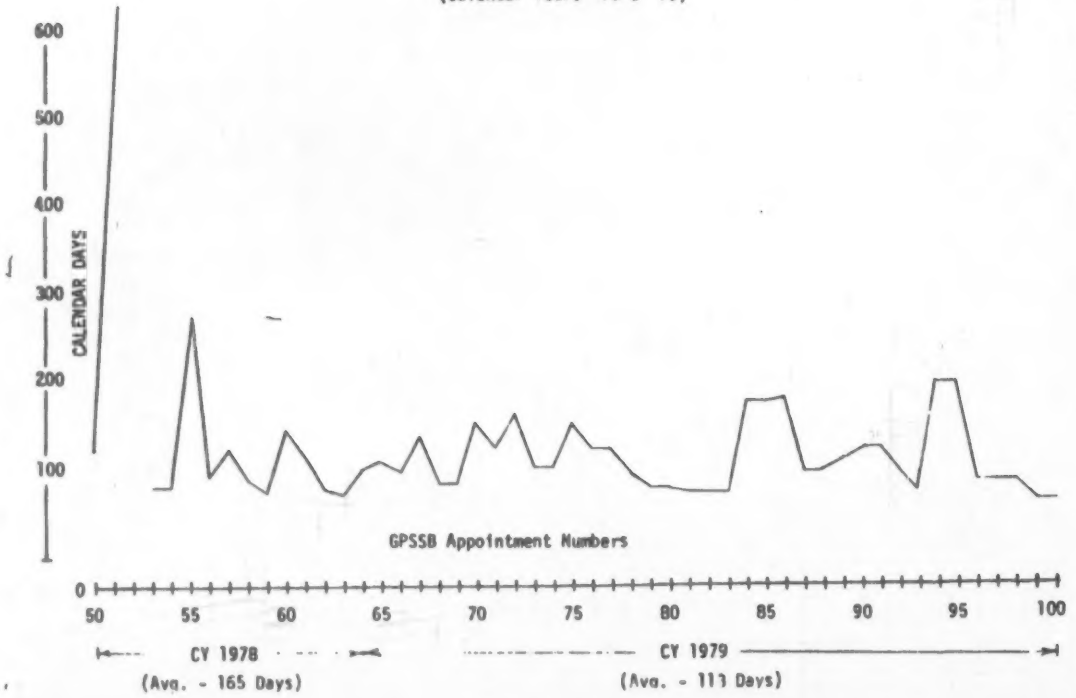
(Calendar Years '75, '76 & '77)



ELAPSED TIME TO AWARD A/E CONTRACT

(From Initial Advertisement to Final BPW Approval)

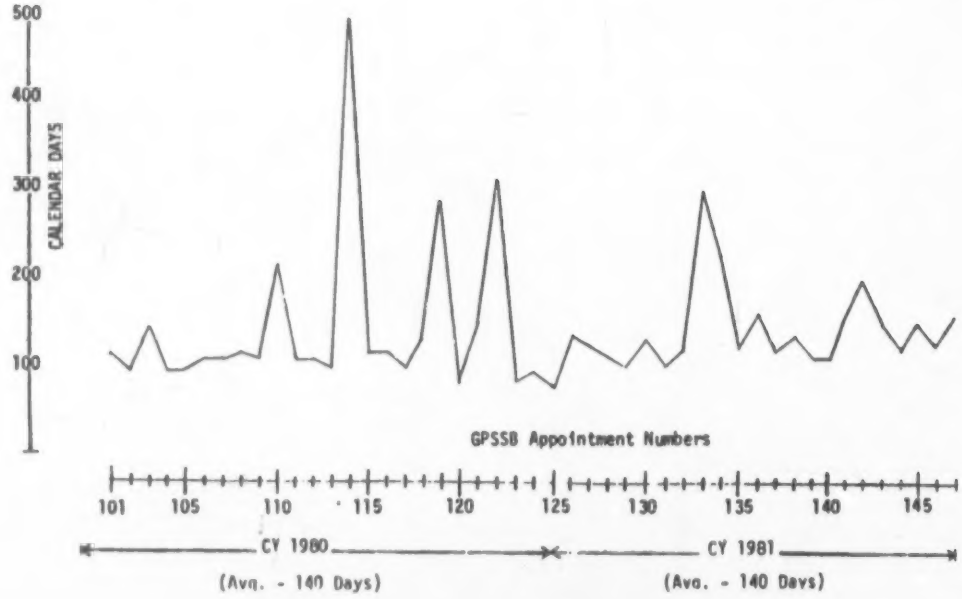
(Calendar Years '78 & '79)



ELAPSED TIME TO AWARD A/E CONTRACT

(From Initial Advertisement to Final BPW Approval)

(Calendar Years '80 & '81)



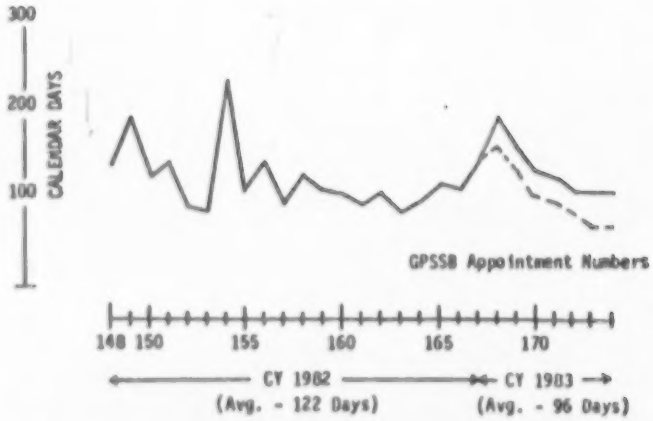
55-611 O - 86 - 7

ELAPSED TIME TO AWARD A/E CONTRACT*

(From Initial Advertisement to Final BPW Approval)*

(Calendar Years '82 & '83 to Date)

--- New Reporting Time



*Beginning CY 1983, the elapsed time for A/E award was computed to reflect time measured from the date of initial advertisement through the date of GPSSB appointment recommendation, rather than through final Board of Public Works approval. This change in reporting time shortens the previously reported selection process schedule generally by two and sometimes by four weeks. This reporting procedure more accurately reflects the GPSSB's selection process and is consistent with the selection schedules reported by the Transportation Professional Services Selection Board.

Prepared 6/30/83
(By the Maryland DGS)

GENERAL PROFESSIONAL SERVICES SELECTION BOARD

Distribution of Fees

New Construction

8/6/75 thru 6/30/83

Estimated Construction Cost	No. of Projects Awarded	Total Estimated Construction Cost (Thousands)	Total Lump Sum Fees	% of Estimated Construction Cost
0 - 500,000	0	---	---	---
500,001 - 1,000,000	21	$ 16,258	$ 901,044	5.54%
1,000,001 - 2,000,000	24	39,205	1,766,335	4.51
2,000,001 - 3,000,000	13	34,152	1,499,472	4.39
3,000,001 - 4,000,000	4	15,800	499,710	3.16
4,000,001 - 5,000,000	7	32,950	1,318,554	4.00
5,000,001 - 10,000,000	15	95,500	3,131,564	3.28
10,000,001 - 20,000,000	6	84,857	3,207,207	3.78
20,000,001 - 30,000,000	2	52,000	1,420,950	2.73
30,000,001 - 40,000,000	1	31,500	1,195,956	3.80
Total	93	$ 402,222	$14,940,792	3.71%

Prepared 6/30/83
(By the Maryland DGS)

GENERAL PROFESSIONAL SERVICES SELECTION BOARD

Distribution of Fees

Alterations/Renovations

8/6/75 thru 6/30/83

Estimated Construction Cost	No. of Projects Awarded	Total Estimated Construction Cost (Thousands)	Total Lump Sum Fees	% of Estimated Construction Cost
0 - 250,000	0	----	----	----
250,001 - 500,000	12	$ 4,403	$ 529,020	12.01%
500,001 - 1,000,000	22	18,153	992,344	5.47
1,000,001 - 2,000,000	20	30,942	1,328,149	4.29
2,000,001 - 3,000,000	5	14,400	583,285	4.05
3,000,001 - 4,000,000	1	3,100	113,928	3.68
4,000,001 - 5,000,000	3	12,820	590,865	4.61
5,000,001 - 6,000,000	0	----	----	----
6,000,001 - 7,000,000	1	7,000	139,800	2.00
Total	64	$90,818	$4,277,391	4.71%

Prepared 6/30/83
(By the Maryland DGS)

GENERAL PROFESSIONAL SERVICES SELECTION BOARD

Distribution of Fees

Construction Inspection*/Management

8/06/75 thru 6/30/82*

Estimated Construction Cost	No. of Projects Awarded	Total Estimated Construction Cost (Thousands)	Total Lump Sum Fees	% of Estimated Construction Cost
0 - 4,000,000	0	----	----	----
4,000,001 - 5,000,000	1	$ 4,300	$ 139,875	3.25%
5,000,001 - 6,000,000	2	11,500	434,800	3.78
6,000,001 - 7,000,000	1	6,160	265,095	4.30
7,000,001 - 8,000,000	0	----	----	----
8,000,001 - 9,000,000	2	17,267	479,260	2.78
9,000,001 - 10,000,000	0	----	----	----
10,000,001 - 20,000,000	0	----	----	----
20,000,001 - 30,000,000	1	25,000	174,460	.70
30,000,001 - 40,000,000	1	33,000	710,355	2.15
Total	8	$ 97,227	$ 2,203,845	2.27%

*Effective July 1, 1982, Chapter 504 of the 1982 Laws of Maryland excluded procurement of construction inspection services from the jurisdiction of the General Professional Services Selection Board.

GENERAL PROFESSIONAL SERVICES SELECTION PROCESS

APPROVED ARCHITECTURAL CHANGE ORDERS/ADDITIONS

8/6/75 thru 6/30/83

	Number	Dollar Value
Projects Awarded to Date	174	$ 22,365,123
Total Number of Change Orders	202	3,927,670*

$ 3,927,670 = 17.56%
$ 22,365,123

*$1,155,534 (29.42% of the total fees for change orders) were elective change orders associated with modification and relocation of Jessup Prison to Hagerstown.

Prepared 6/30/83

SUMMARY OF WAIVERS OF GENERAL PROFESSIONAL SERVICES SELECTION PROCESS

ARCHITECT & ENGINEERS SERVICES ACT PURSUANT TO GUBERNATORIAL DECLARATIONS OF EMERGENCY

	Consultants	Price Proposal	Reason for Waiver
1. Dept. of Public Safety & Correctional Services			
Project No. KB-611-763 180 Bed Medium Security Housing Unit Maryland Training Center Hagerstown, Maryland	*Rogers & Vaeth, Inc. McLeod, Ferrara & Ensign J. Prentiss Browne, Inc. LBC & W	$ 38,150.00 67,724.00 70,000.00 88,500.00	Overcrowded Prison Conditions
BPW Approval 10-22-76			
2. Dept. of Public Safety & Correctional Services			
Project No. KJC-622-771 Medium Security Institution Jessup, Maryland	*Myers Hinds Jenkins Partnership Office of Arthur M. Love, Jr. Rogers & Vaeth Dewberry, Nealon & Davis Joseph A. Vaghi	47,544.00 59,500.00 59,500.00 63,500.00 71,037.00	Overcrowded Prison Conditions
BPW Approval 12-3-76			
3. Dept. of Public Safety & Correctional Services			
Project No. KEB-771 Medium/Minimum Security Prison East Baltimore	*McLeod, Ferrara, Ensign/Gruzen , Partners Chatelain,Samperton & Carcaterra/ Litchfield/Grosfeld Henningson, Durham, Richardson/ Kidde Consultants, Inc. Thalheimer-Weitz-Sulton&Campbell Ayers/Saint/Curtis & Davis Mills Petticord/HOK/Walton,Madden Cooper, Inc.	661,550.00 824,300.00 855,000.00 888,000.00 980,500.00 1,110,750.00	Overcrowded Prison Conditions
BPW Approval 11-9-77			

*Indicates A/E Firm Awarded Project

SUMMARY OF WAIVERS OF GENERAL PROFESSIONAL SERVICES SELECTION PROCESS

ARCHITECT & ENGINEERS SERVICES ACT PURSUANT TO GUBERNATORIAL DECLARATIONS OF EMERGENCY

	Consultants	Price Proposal	Reason for Waiver
4. Board of Trustees, State Univ. & Colleges			
Project No. TF-762-(1) Deep Mine Subsidence Stabilization Frostburg State College	*Century Engineering, Inc. Robert B. Balter Ewell, Bomhardt & Associates Ackenheil & Associates	$ 44,000.00 49,300.00 109,650.00 123,400.00	To Prevent Loss of Federal Funding
BPW Approval 5-19-78			
5. University of Maryland			
Project No. UB-713 School of Pharmacy Baltimore City Campus	*Miller Schuerholz w/ Nes Campbell & Partners	426,300.00	**
BPW Approval 9-19-79			

**Originally appointed architect bankrupt-appointment of original mechanical, electrical and structural engineering firms with Nes Campbell, employed by the value engineer as an architectural consultant, to modify existing plans to incorporate value engineering proposals so as to bid the project within the funds appropriated. Project continuity would thus be maintained, time lost minimized and project experience maximized.

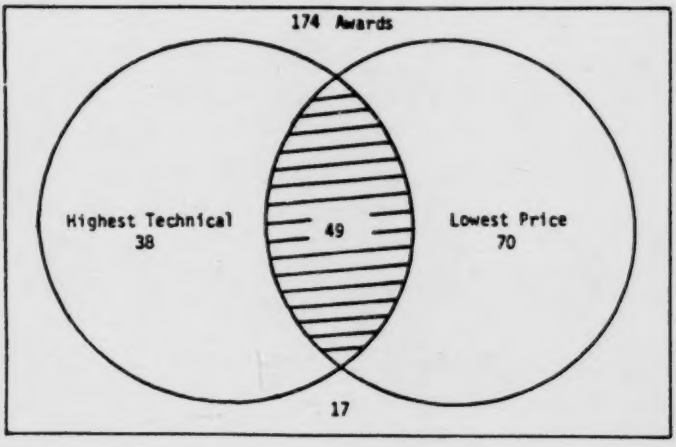
*Indicates A/E Firm Awarded Project

GENERAL PROFESSIONAL SERVICES SELECTION PROCESS

DISTRIBUTION OF A/E AWARDS

TECHNICAL VS. PRICE PROPOSALS

8/6/75 thru 6/30/83



	No. of Awards	Percentage of Awards	Dollar Value	Percentage of Dollar Value
Highest Scored Technical Proposal (but not lowest price)	38	21.84%	$ 5,259,765	23.52%
Highest Scored Technical Proposal and Lowest Price Proposal	49	28.16	5,550,243	24.82
Lowest Price Proposal	70	40.23	8,359,084	37.37
Other	17	9.77	3,196,031	14.29
Total	174	100.00%	$22,365,123	100.00%

Prepared 6/30/83
(By the Maryland DGS)

General Professional Services Selection Process

Comparison of Lump Sum Fees Awarded

Highest Technical Proposal (but not lowest price)

vs.

Lowest Price Proposal Submitted

8/6/75 thru 6/30/83

Appointment Number	Value of Contract Awarded	Value of Lowest Price	Difference
2	$ 75,936.00	$ 74,871.00	$ 865.00
3	169,540.00	150,379.00	19,161.00
6	51,200.00	49,500.00	1,700.00
15	48,500.00	39,667.00	8,833.00
21	130,500.00	110,000.00	20,220.00
22	154,950.00	143,000.00	11,950.00
24	129,500.00	92,014.00	37,486.00
28	140,024.41	98,250.00	41,774.41
30	174,430.00	141,430.00	33,000.00
33	39,485.35	38,306.00	1,179.35
36	21,000.00	16,206.00	4,794.00
40	247,700.00	220,000.00	27,700.00
45	213,000.00	210,640.00	2,360.00
50	24,850.00	18,298.00	6,552.00
51	48,207.00	40,240.00	7,967.00
52	123,490.00	110,278.00	13,211.00
56	28,650.00	27,287.46	1,362.54
60	98,000.00	88,259.00	9,741.00
69	254,000.00	198,700.00	55,300.00
77	254,500.00	209,960.00	54,540.00
78	39,982.00	32,726.00	7,256.00
80	113,838.00	108,100.00	5,738.00

(Continued)

General Professional Services Selection Process

Comparison of Lump Sum Fees Awarded

Highest Technical Proposal (but not lowest price)

vs.

Lowest Price Proposal Submitted

8/6/75 thru 6/30/83

(Cont'd.)

Appointment Number	Value of Contract Awarded	Value of Lowest Price	Difference
83	94,250.00	92,000.00	2,250.00
86	124,100.00	113,590.00	10,510.00
90	188,340.00	183,900.00	22,440.00
91	159,721.00	94,040.00	65,681.00
95	139,000.00	139,000.00	20,000.00
97	58,000.00	53,568.00	4,431.00
102	54,000.00	49,800.00	4,200.00
103	113,926.00	106,600.00	7,326.00
121	149,857.00	116,000.00	33,857.00
124	99,520.00	94,820.00	4,700.00
132	84,972.00	76,502.00	8,470.00
135	58,268.00	35,977.00	22,291.00
142	30,000.00	24,615.00	5,385.00
146	49,586.00	45,500.25	4,085.75
157	84,249.00	39,[illegible]	45,[illegible]
173	48,[illegible]	[illegible]	[illegible]
Total 18	[illegible]	[illegible]	[illegible]

Average Difference $17,333.48

Prepared 6/30/83

CUMULATIVE DISTRIBUTION OF A/E CONTRACTS

8/6/75 thru 6/30/83

A/E	No. of Awards	Dollar Value
The VVKR Partnership	6	$ 1,883,197
Diversified Engineering W/LBCAW (JV)	4	861,816
Kidde Consultants, Inc.	3	789,055
McLeod Ferrara Ensign	7	710,895
S/C/D (Baltimore/Florida)	8	632,887
Smedile, Offick & Jones, Ltd.	3	601,224
Gipp Associates	7	598,000
Eugene Palmer w/Collins & Kronstadt, Leahy, Hogan, Collins, Draper (JV)	2	477,000
Heery Program Management	3	469,125
Greene, Worrell & Johnson	4	464,785
Lyon Associates, Inc.	2	430,885
[illegible]	3	402,344
Wilson, Nelson, Cooper, Inc.	2	371,200
George, Miles & Buhr	2	328,500
Crawford Associates	5	324,850
Richards, Taylor & Crowder, Inc. (JV)	5	320,450
[illegible] Associates	4	318,000
KBP, Inc. (Inc. Campbell & Partners)	2	291,645
Dorsey Associates, Inc.	5	288,500
Gaudreau and Davis	2	285,670
HDS Corporation	2	267,631
Lawrence and Upton	3	172,400

(Continued)

CUMULATIVE DISTRIBUTION OF A/E CONTRACTS

8/75 thru 6/30/83

(Cont'd.)

A/E	No. of Awards	Dollar Value
Edmunds and Hyde	2	$ 162,221
Hooker/Bernard Johnson (JV)	2	135,982
Burdette, Koehler, Murphy	3	135,420
Glas, Riggs, Owens & Ramos	2	115,942
Smith/Kirwin	2	113,500
Mark Beck Associates	2	109,050
May and Holbrook	2	106,450
Bennett and Brandt	2	94,000
Engineering Science	2	78,718
Donald Lee Stickler w/Stehn & Associates, Inc.(JV)	2	75,400
Cohen-Haryman & Associates, Inc.	2	70,115
Firms w/Multiple Awards (33)	109	12,237,154
Firms w/Single Awards (65)	65	10,127,969
TOTALS (98)	174	$22,365,123

Prepared 6/30/83

Distribution of Home Office Locations at Time of Award
174 Appointments
8/6/75 thru 6/30/83

Maryland		147
Baltimore	62	
Silver Spring	17	
Towson	16	
Chevy Chase	10	
Easton	8	
Crofton	7	
Hagerstown	7	
Adelphi	3	
Riverdale	3	
Salisbury	3	
Annapolis	1	
BelAir	1	
Cambridge	1	
Columbia	1	
Gaithersburg	1	
Glen Burnie	1	
Hunt Valley	1	
Lanham	1	
Mt. Rainier	1	
Rockville	1	
Severna Park	1	
Virginia		10
Alexandria	6*	
Fairfax	2*	
McLean	2*	
Pennsylvania		6
Harrisburg	1*	
Philadelphia	1	
Pittsburgh	1*	
Plymouth Meeting	1	
Reading	1*	
York	1*	
Georgia		3
Atlanta	3*	
Missouri		2
St. Louis	2*	
District of Columbia		2
Massachusetts		1
Cambridge	1	
Nebraska		1
Omaha	1*	
Oregon		1
Corvallis	1	
South Carolina		1
Columbia	1*	
		174

*Branch Office in Maryland

Only 6 appointments were to firms with no home office or branch office in Maryland; 2 of the 6 appointments were to firms located in District of Columbia. Fees awarded to the 6 firms located out-of-State totaled $936,434 (4.2%); 95.8% of all fees awarded were to firms with Maryland home or branch offices.

83 firms have home offices in Maryland

CUMULATIVE DISTRIBUTION OF A/E CONTRACT AWARDS BY AGENCY
8/6/75 thru 6/30/83

Agency	No. of Awards	Dollar Value	Average Dollar Value Per Project
University of Maryland	41	$ 5,905,518	$ 144,037
College Park (21)		2,663,049	126,812
Baltimore City (11)		2,338,031	212,548
Baltimore Co. (4)		357,918	89,480
Eastern Shore (2)		236,000	118,000
Horn Point (3)		310,520	103,506
Dept. of Public Safety and Correctional Services	25	4,614,489	184,580
Division of Corr. (19)		4,339,026	228,370
State Police (6)		275,463	45,911
Board of Public Works	16	2,754,014	172,126
Executive Management Bd. (9)		1,624,604	180,512
Veterans Home Commission (2)		607,260	303,630
Dept. of General Services (5		522,150	104,430
Dept. of Health & Mental Hygiene	33	2,522,331	76,434
Dept. of Natural Resources	22	2,075,170	94,326
MES (12)		1,336,237	102,787
Water Resources (2)		200,982	100,491
Maryland Park Service (6)		441,451	73,575
Md. Geological Survey (1)		96,500	96,500
Board of Trustees of the State Universities & Colleges	17	1,712,474	100,734
Frostburg (4)		346,287	86,572
Salisbury (3)		272,150	90,717
Coppin (2)		148,200	74,100
Towson (6)		728,137	121,356
Bowie (1)		147,700	147,700
Univ. of Balto. (1)		70,000	70,000
Morgan State University	3	766,250	255,417
Dept. of Agriculture	1	487,072	487,072
Dept. of General Services	4	481,658	120,415
Military Department	5	334,787	66,957
St. Mary's College of Md.	1	220,887	220,887

(Continued)

CUMULATIVE DISTRIBUTION OF A/E CONTRACT AWARDS BY AGENCY
(Cont'd.)

Agency	No. of Awards	Dollar Value	Average Dollar Value Per Project
Dept. of Economic & Community Development	2	$ 169,170	$ 84,585
St. Mary's City Commission			
Md. School for the Blind	1	115,420	115,420
Judiciary	1	96,283	96,283
Md. Ctr. for Public Broadcasting	1	76,900	76,900
Workmen's Compensation Comm.	1	32,700	32,700
Total	174	$ 22,365,123	$ 128,535

Prepared 6/30/83

GENERAL PROFESSIONAL SERVICES SELECTION PROCESS

QUALIFICATION COMMITTEE RANKING AS INDICATOR OF SELECTION

8/6/75 thru 6/30/83

Ranked by Qual. Comm.	No. of Firms Ranked	Percentage of Awards
No. 1	97	55.74%
No. 2	41	23.56
No. 3	22	12.64
No. 4	11	6.32
No. 5	1	.58
No. 6	1	.58
No. 7	1	.58
	174	100.00%

Prepared 6/30/83
(By the Maryland DGS)

APPENDIX C. FLORIDA LAW: PROCUREMENT OF ARCHITECTURAL AND ENGINEERING SERVICES

287.055 Acquisition of professional architectural, engineering, landscape architectural, or land-surveying services; definitions; procedures; contingent fees prohibited; penalties.—

(1) SHORT TITLE.—This section shall be known as the "Consultants' Competitive Negotiation Act."

(2) DEFINITIONS.—For purposes of this section:

(a) "Professional services" shall mean those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered land surveying, as defined by the laws of the state, or those performed by any architect, professional engineer, landscape architect, or registered land surveyor in connection with his professional employment or practice.

(b) "Agency" means the state or a state agency, municipality, or political subdivision, a school district or a school board.

(c) "Firm" means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice architecture, engineering, or land surveying in the state.

(d) "Compensation" means the total amount paid by the agency for professional services.

(e) "Agency official" means any elected or appointed officeholder, employee, consultant, person in the category of other personal service or any other person receiving compensation from the state, a state agency, municipality, or political subdivision, a school district or a school board.

(f) "Project" means that fixed capital outlay study or planning activity described in the public notice of the state or a state agency pursuant to paragraph (3)(a). An agency shall prescribe by administrative rule procedures for the determination of a project under its jurisdiction. Such procedures may include:

1. Determination of a project which constitutes a grouping of minor construction, rehabilitation, or renovation activities.

2. Determination of a project which constitutes a grouping of substantially similar construction, rehabilitation, or renovation activities.

(g) A "continuing contract" is a contract for professional services entered into in accordance with all the procedures of this act between an agency and a firm whereby the firm provides professional services to the agency for work of a specified nature as outlined in the contract required by the agency with no time limitation except that the contract shall provide a termination clause.

(3) PUBLIC ANNOUNCEMENT AND QUALIFICATION PROCEDURES.—

(a) Each agency shall publicly announce, in a uniform and consistent manner, each occasion when professional services are required to be purchased for a project whose basic construction cost is estimated by the agency to be more than $100,000 or for a planning or study activity when the fee for professional services exceeds $5,000, except in cases of valid public emergencies so certified by the agency head. Public notice shall include a general description of the project and shall indicate how interested consultants can apply for consideration.

(b) Each agency shall encourage firms engaged in the lawful practice of their profession who desire to provide professional services to the agency to submit annually a statement of qualifications and performance data.

(c) Any firm or individual desiring to provide professional services to the agency must first be certified by the agency as qualified pursuant to law and the regulations of the agency. The agency shall make a finding that the firm or individual to be employed is fully qualified to render the required service. Among the factors to be considered in making this finding are the capabilities, adequacy of personnel, past record, and experience of the firm or individual.

(d) Each agency shall adopt administrative procedures for the evaluation of professional services, including, but not limited to, capabilities, adequacy of personnel, past record and experience, and such other factors as may be determined by the agency to be applicable to its particular requirements.

(e) The public shall not be excluded from the proceedings under this section.

(4) COMPETITIVE SELECTION.—

(a) For each proposed project, the agency shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and shall conduct discussions with, and may require public presentations by, no less than three firms, regarding their qualifications, approach to the project, and ability to furnish the required service.

(b) The agency shall select, in order of preference, no less than three firms deemed to be most highly qualified to perform the required services after considering such factors as the ability of professional personnel, past performance, willingness to meet time and budget requirements, location, recent, current, and projected work loads of the firms, and the volume of work previously awarded to the firm by the agency, with the object of effecting an equitable distribution of contracts among qualified firms, provided such distribution does not violate the principle of selection of the most highly qualified firms.

(c) This subsection shall not apply to a professional service contract for a project whose basic construction cost is estimated by the agency to be $100,000 or less or for a planning or study activity when the fee for professional services is $5,000 or less.

(d) Nothing in this act shall be construed to prohibit continuing contracts between firm and agency.

(5) COMPETITIVE NEGOTIATION.—

(a) The agency shall negotiate a contract with the most qualified firm for professional services at compensation which the agency determines is fair, competitive, and reasonable. In making such determination the agency shall conduct a detailed analysis of the cost of the professional services required in addition to considering their scope and complexity. For all lump-sum or cost-plus-a-fixed-fee professional service contracts over $50,000, the agency shall require the firm receiving the award to execute a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. Any professional service

contract under which such a certificate is required shall contain a provision that the original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the agency determines the contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract adjustments shall be made within 1 year following the end of the contract.

(b) Should the agency be unable to negotiate a satisfactory contract with the firm considered to be the most qualified at a price the agency determines to be fair, competitive, and reasonable, negotiations with that firm shall be formally terminated. The agency shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the agency shall terminate negotiations. The agency shall then undertake negotiations with the third most qualified firm.

(c) Should the agency be unable to negotiate a satisfactory contract with any of the selected firms, the agency shall select additional firms in order of their competence and qualification and continue negotiations in accordance with this subsection until an agreement is reached.

(6) PROHIBITION AGAINST CONTINGENT FEES.—

(a) Each contract entered into by the agency for professional services shall contain a prohibition against contingent fees as follows: "The architect (or registered land surveyor or professional engineer, as applicable) warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for the architect (or registered land surveyor, or professional engineer, as applicable) to solicit or secure this agreement and that he has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the architect (or registered land surveyor or professional engineer, as applicable) any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this agreement." For the breach or violation of this provision, the agency shall have the right to terminate the agreement without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

(b) Any individual, corporation, partnership, firm, or company, other than a bona fide employee working solely for an architect, professional engineer, or registered land surveyor, who offers, agrees, or contracts to solicit or secure agency contracts for professional services for any other individual, company, corporation, partnership, or firm, and to be paid, or is paid, any fee, commission, percentage, gift, or any other consideration contingent upon, or resulting from, the award or the making of a contract for professional services shall, upon conviction in a competent court of this state, be found guilty of a first degree misdemeanor punishable as provided in s. 775.082 or s. 775.083.

(c) Any architect, professional engineer, or registered land surveyor, or any group, association, company, corporation, firm, or partnership thereof, who shall offer to pay, or pay, any fee, commission, percentage, gift, or other consideration contingent upon, or resulting from, the award or making of any agency contract for professional services, shall, upon conviction in a state court of competent authority, be found guilty of a first degree misdemeanor punishable as provided in s. 775.082 or s. 775.083.

(d) Any agency official who offers to solicit or secure, or solicits or secures, a contract for professional services and to be paid, or is paid, any fee, commission, percentage, gift, or any other consideration contingent upon the award or making of such a contract for professional services between the agency and any individual person, company, firm, partnership, or corporation shall, upon conviction by a court of competent authority, be found guilty of a first degree misdemeanor punishable as provided in s. 775.082 or s. 775.083.

(7) AUTHORITY OF DEPARTMENT OF GENERAL SERVICES.—Notwithstanding any other provision of this section, the Department of General Services, Division of Building Construction and Property Management, shall be the agency of state government which is solely and exclusively authorized and empowered to administer and perform the functions described in subsections (3), (4), and (5) respecting all projects for which the funds necessary to complete same are appropriated to the Department of General Services, irrespective of whether such projects are intended for the use and benefit of the Department of General Services or any other agency of government. However, nothing herein shall be construed to be in derogation of any authority conferred on the Department of General Services by other express provisions of law. Additionally, any agency of government may, with the approval of the Department of General Services, delegate to the Department of General Services authority to administer and perform the functions described in subsections (3), (4), and (5). Under the terms of the delegation, the agency may reserve its right to accept or reject a proposed contract.

(8) STATE ASSISTANCE TO LOCAL AGENCIES.—On professional service contracts for which the fee is over $25,000, the Department of Transportation or the Department of General Services shall provide, upon request by a municipality, political subdivision, school board, or school district, and upon reimbursement of the costs involved, assistance in selecting consultants and in negotiating consultant contracts.

(9) APPLICABILITY TO EXISTING CONTRACTS.—Nothing in this section shall affect the validity or effect of any contracts in existence on July 1, 1973.

(10) Notwithstanding any other provision of this section, there shall be no public notice requirement or utilization of the selection process as provided in this section for projects in which the agency is able to reuse existing plans from a prior project. However, subsequent to July 1, 1975, public notice for any plans which are intended to be reused at some future time shall contain a statement which provides that the plans are subject to reuse in accordance with the provisions of this subsection.

(11) Nothing in the amendment of this section by

ch. 75-281, Laws of Florida, is intended to supersede the provisions of ss. 235.211 and 235.31.
History.—ss. 1-8, ch. 73-19; ss. 1-3, ch. 75-281; s. 1, ch. 77-174; s. 1, ch. 77-199.

287.062 Competitive bids, when required; exception.—No purchase of commodities may be made when the purchase price thereof is in excess of $1,000 unless made upon competitive bids received, except:

(1) If the head of any state agency shall maintain that an emergency exists in regard to the purchase of any commodity, so that the delay incident to giving opportunity for competitive bidding would be detrimental to the interests of the state, then the head of such agency shall file with the division a statement under oath certifying the conditions and circumstances. In the case of the emergency purchase of insurance the period of coverage of such insurance shall not exceed a period of 30 days, and all such emergency purchases shall be reported to the head of the Department of General Services.

(2) Purchasing agreements, contracts, and maximum price regulations executed by the division are excepted from bid requirements.

(3) Commodities available only from a single source may be excepted from the bid requirements upon the filing by the head of an agency of a certification of conditions and circumstances with the division if, subsequent thereto, the division authorizes the exception in writing.

(4) When it is in the best interest of the state, the head of the Department of General Services may authorize the division director to purchase insurance by negotiation, but this shall be done only under conditions most favorable to the public interest and upon a showing that said purchase shall result in the lowest ultimate cost for the coverage obtained.
History.—s. 22, ch. 69-106.

287.072 Delegation of authority to purchase.—

(1) Except as limited herein, the division may delegate the authority for the contracting for, or the purchase, lease, or acquisition of, commodities in the following cases:

(a) Technical instruments and supplies, technical books, and other printed matter on technical subjects; manuscripts, maps, books, pamphlets, and periodicals for the use of the State Library or any other library in the state supported in whole or in part by state funds.

(b) Perishable articles, such as fresh vegetables, fruit, fish, meat, eggs, and milk. No other article shall be considered perishable within the meaning of this clause unless so classified by the division.

(c) Life and health insurance when no part of the premium is paid by the state.

(2) All contracts for, or purchases, leases, or acquisitions of, commodities described in this section made directly by the agencies shall, whenever possible, be based on two or more competitive bids. Whenever an order, contract, lease, or acquisition of such commodities is awarded by any agency, a copy of such order, contract, lease, or other document together with a record of the competitive bids, if any, upon which it was based shall be forwarded to the division.
History.—s. 22, ch. 69-106.

287.082 Commodities manufactured in state given preference.—Whenever two or more competitive bids are received, one or more of which relates to commodities manufactured within this state, and whenever all things stated in such received bids are equal with respect to price, quality, and service, the commodities manufactured within this state shall be given preference.
History.—s. 22, ch. 69-106.

287.083 Purchase of commodities.—

(1) It shall be the policy of the state for the Division of Purchasing to consider the life-cycle cost of commodities purchased by the state, when applicable and feasible as determined by the division.

(2) Definitions.—For the purpose of this section:

(a) "Major energy-consuming product" means any article so designated by the division in conjunction with the State Energy Office of the Department of Administration.

(b) "Energy-efficiency standard" means a performance standard which prescribes the relationship of the energy use of a product to its useful output of services.

(3)(a) The division is authorized to establish by rule energy-efficiency standards for major energy-consuming products, in conjunction with the State Energy Office of the Department of Administration.

(b) When federal energy-efficiency standards exist, the division shall, when feasible, adopt standards at least as stringent as the federal standards.

(4) When energy-efficiency standards are established, life-cycle costs shall be used by the division in contracting for major energy-consuming products.

(5) In determining the life-cycle cost, the division may consider the acquisition cost of the product; the energy consumption and the projected cost of energy over the useful life of the product; and the anticipated trade-in, resale, or salvage value of the product.
History.—s. 2, ch. 77-316.

287.084 Preference to Florida businesses.—

(1) When a county, municipality, school district, or other political subdivision of the state is required to make purchases of personal property through competitive bidding and the lowest responsible bid is by a bidder whose principal place of business is in a state or political subdivision thereof which grants a preference for *[the purchase of] such personal property to a person whose principal place of business *[is] in such state, then the county, municipality, school district, or other political subdivision of this state may award a preference to the lowest responsible bidder having a principal place of business within this state, which preference is equal to the preference granted by the state or political subdivision thereof in which the lowest responsible bidder has his principal place of business. However, this section shall not apply to transportation projects for which federal aid funds are available.

(2) If an invitation for bids provides for the granting of such preference *[as is provided] herein, any bidder whose principal place of business is outside

the State of Florida must accompany any written bid documents with a written opinion of an attorney at law licensed to practice law in that foreign state, as to the preferences, if any or none, granted by the law of that state to its own business entities whose principal places of business are in that foreign state in the letting of any or all public contracts.

History.—s. 1, ch. 77-460.

[1]Note.—Bracketed word inserted to correct an apparent engrossing error in Amendment 1 to S.B. 37-B. See p. 10 of the Senate Journal of June 23, 1977.

[2]Note.—Bracketed language inserted by the editors.

STATEMENT OF DAVID E. LAWSON—CONTINUED

Mr. LAWSON. Thank you.

Suffice it to say, the Brooks Act has worked well in supplying this Nation with highly-qualified design professionals at a reasonable and fair price. The ultimate beneficiary of this process has been the American taxpayer.

In conclusion, Mr. Chairman, let me state that I hope these observations will assist the subcommittee in further understanding the value and nature of A&E selection. The American Institute of Architects is ready and willing to assist the subcommittee in any way that it can.

I appreciate the opportunity to appear before you today and will be happy to answer any questions you may have.

PREPARED STATEMENT OF DAVID E. LAWSON

Mr. Chairman, my name is David E. Lawson. I am a practicing architect with the Madison, Wisconsin firm of Potter, Lawson & Pawlowsky Inc. I am here today representing The American Institute of Architects in my role as a current member of the Institute's Board of Directors and a Vice President-elect for 1986.

It is a distinct privilege and honor for me to appear before this Subcommittee to discuss the importance of selecting design professionals under the Brooks Act and to ensure full access to the marketplace for all interested firms. In an effort to conserve the Subcommittee's time and to avoid reiterating the points made by other members of this design panel, I would like to relate these issues to the architectural profession.

SMALL BUSINESS ISSUES

As you may know, the architectural profession is composed primarily of small businesses. According to the most recent industry wide data available, the 1982 Census of Service Industries, the following is indicated:

Under current size standards, approximately 97 percent of architectural firms fall within the Small Business Administration's definition of a "small business." This figure would decrease to approximately 90 percent if the SBA adopts a size standard in the 1.5 million dollar range.

Approximately 80 percent of architectural firms have 10 or fewer employees on their payrolls.

Notwithstanding the size of many firms, by grouping several small specialized firms and using consultants, architects can produce a design team tailor-made to a particular project.

The federal procurement regulations recognize the idiosyncrasies of the design profession and emphasize the qualifications of the individual members of a team. Procurement experts knowledgeable in architecture, engineering and construction know these qualifications are more important than the size of a firm or its reputation. Competition on the level of skill of an architect can be vigorous and fair irrespective of the firm's size.

The issue of set-asides has been a difficult one of the AIA to resolve. We believe set-asides arbitrarily limit the competition of A/E firms in contravention of the Brooks Act, while not truly assisting the development of small firms. Moreover, the AIA will neither support nor oppose regulations, such as set-asides, which tend to favor one segment of its membership over another.

With respect to the method of setting aside projects for small businesses, the AIA favors the more objective and measureable $85,000 threshold method over the totally subjective "rule of two" method.

Data recently compiled by the Defense Department regarding the level of participation of small businesses under the $85,000 threshold method reveals some interesting facts. Small businesses are receiving approximately the same number of jobs [83.1 percent (1st half of 1985) vs. 87.0 percent (in 1983, which represents the last full year the "rule of two" method was used by DOD)] and are actually receiving a slightly higher dollar amount of work (68.0 percent vs. 67.6 percent).

The fact is, small businesses are winning these jobs in open competition under the Brooks Act instead of having them set aside. Use of the $85,000 threshold method

has merely eliminated the subjective and sometimes arbitrary setting aside of jobs that should be left in the market under open competition.

In all fairness, some jobs demand the multidisciplinary expertise and capabilities that only a large design firm can offer economically. Likewise, small firms are often best suited for small projects. As the DOD states in its letter to Chairman Aspin, the data "reinforces a belief held by many that small A-E firms are naturally more successful in obtaining small jobs and large firms more successful in obtaining large jobs, even under open competition."

Procuring A/E services under the Brooks Act.—The AIA endorses and supports the selection of architects and engineers for federal, state and local governmental work after vigorous and open competition on the basis of professional qualifications and competence.

The selection process mandated in the Brooks Act (P.L. 92-582), is fair, competitive, effective and efficient in the delivery of quality architectural and engineering services to the federal government for a "fair and reasonable" price. There is widespread support for a selection method utilizing the Brooks Act process as evidenced by the fact that over half the states in the union use a similar method for procuring A/E services. Maryland, the one state that required price proposals at the selection stage, recently repealed their law and returned to a more traditional Brooks Act approach.

Mr. Chairman, a test program of selected projects simply will not disclose the fundamental flaws inherent in a price proposal selection method. An extensive study of the recently repealed State of Maryland price selection method, which had been in existence for 10 years, revealed the following:

The Maryland A/E selection method was significantly more time consuming and expensive than a state using the traditional Brooks Act method. The primary reason for this lay in the fact that under the Maryland approach the necessity of preparing a detailed preliminary design upon which A/E firms could base their price proposals results in added time delays and cost increases.

The Maryland A/E selection method required a significantly larger administrative staff and budget than a state using the traditional Brooks Act method. Once again, the increased staff and budget resulted from the necessity of preparing detailed preliminary programs in-house upon which the private A/E firms could submit price proposals.

The Maryland experience exhibited an undesirable tendency on the part of A/E firms to stop competing for government work because it was too expensive for them to create detailed cost proposals and then not win the project. Moreover, even for those firms winning the job it was very often cost prohibitive since they had reduced their fees excessively in order to be selected. As a result, architects in Maryland viewed state projects as work of "last resort."

After a few years, the Maryland system began to make a larger and larger number of its A/E selections based upon the lowest bid rather than on the highest technical qualifications.

Testimony before the Maryland legislature revealed that "change orders" tend to proliferate when low bid designs are awarded the contract which then need improvements or new design features to meet the government's needs. (See attached).

As noted, many of the undesirable aspects of using price proposals at the selection stage may, by happenstance, not become apparent during a test which selects a few projects. Nevertheless, the test will be used as evidence to support changing the Brooks Act so that all design work is procured by the price proposal method.

The truth is, without the qualifications-based procurement procedure, public buildings are likely to be more expensive to build, to operate and to maintain, and their design is far more likely to be unimaginative, uninspired and inflexible. The construction industry also recognizes the value in having A/E design selected by qualifications as evidenced by the Associated General Contractors' (AGC) endorsement of the Brooks Act. Changing the Brooks Act, based upon as selective test, without regard to its 13-year record of success is unwarranted and unjustified.

Mr. Chairman, with your permission and in the interest of time, I would like to submit for the record a memorandum which further elaborates the benefits obtained by the federal government in using the current Brooks Act method of selecting design firms and a copy of the study on the Maryland price selection process.

Suffice it to say, the Brooks Act has worked well in supplying this nation with highly qualified design professionals at a reasonable and fair price. The ultimate beneficiary of this process has been the American taxpayer.

In conclusion, Mr. Chairman, let me state that I hope these observations will assist the Subcommittee in further understanding the value and nature of A/E selection. The American Institute of Architects is ready and willing to assist the Sub-

committee in any way that it can. I appreciate the opportunity to appear before you today and will be happy to answer any questions you may have.

Thank you.

[Background material on repeal of Maryland's Price Selection Law follows:]

Annapolis, Md. May 28, 1985

Maryland Overturns Architect Bidding Law

In a stunning reversal of the 1974 law enacted as a result of the Spiro Agnew scandals, the Maryland Legislature removed competitive bidding from the Architect/Engineer selection law. Thus ends the longest experiment ever conducted by any Government using price as a key factor.

Legislators, with support from Governor Hughes and Agency executives, approved the change overwhelmingly in the House (92-38) and Senate (32-6).

Technical competence will be the primary factor utilized when design contracts are awarded for State projects. The fee and scope of services will be negotiated in an open, detailed and well documented discussion between State and A/E.

Senator Sidney Kramer (D.), sponsor of the Senate bill said, "The change will result in better designs, quicker, and with fewer headaches for the State, while saving money too." He told the Senate, "For 10 years people bid who can't do the job, at least not for their bid price; then they come in for extra payments, which has resulted in litigation and costly delays."

During floor debate, Senator Lawrence Levitan (D.) said he was on a House Committee in 1974 and they were "sold a bill of goods by the sponsor. I don't think I would say he lied to us, but his facts were not factual. In the heat of the scandals we reacted badly."

"The law made us into economic adversaries," said Baltimore architect Phillip T. Worrall. "We give the State the minimum required by its written program in order to keep the bid low enough to get the contract. Innovation and communication between client and architect ceased."

Worrall added, "When the client suggests a design change, no matter how minor, we demand more fee because the bid was based on State specifications." Worrall told Legislators, " The State learned, after 10 years, that it is impossible to write a program that anticipates every possible contingency that may arise in the design stage."

Businessmen, via Chambers of Commerce, testified that bidding for professional design services is not practical because low bidders often produce bad design, or give you what they will to keep their costs down. The design is not what the businessman hoped for, and often litigation results.

For years CEC/MI and MSAIA presented figures proving that the total cost of design under the Maryland system far exceeded the claims of an Agency executive who boasted that he kept A/E fees low. He regularly dismissed all other costs created by the slow and cumbersome system, which increased Maryland costs 200% over States that used a purely qualifications-plus-negotiated-fee system.

At a public hearing a few years ago the State Treasurer said, "The price of virtue now comes high in Maryland," again illustrating that low up-front costs were not the principal concern of some leaders. They wanted a system with safeguards that guaranteed 1973's problems would not recur. What some did not recognize is that the law was refined over 10 years with openness and sunshine.

What prompted Legislators to repeal the pricing element occurred October 16, 1984. At a lengthy public hearing in the House Economic and Administrative Law Committee, an Engineer explained how he was awarded a contract based on his qualifications and low bid, then told the State of an error in its program and was awarded $383,000 extra fee for new designs.

Architect Worrall told the Committee of a similar example with a University of Maryland building; the client wants the new idea and Worrall wants to be paid for it. They have been stalemated for more than a year.

Legislators were shocked and berated both witnesses for not being professional and advising the State up front. Both told the Committee, " When you chisel my fee I have no obligation to produce anything except what you specifically ask for in your program. Treat us as professionals and we respond accordingly.

" We also have learned to respond like contractors. We give you only what you put in writing and it is impossible for a layman client to identify creative ideas in enough detail to assure that what he thinks he wants is what he will get from a bidder. That is the essential difference between raw business and professionalism. "

From that moment Legislators had no difficulty reviewing other projects to find where extra design fees were paid legally; these were not two isolated incidents.

Maryland citizens, including A/E's and legislators, respect the Administration because Governor Hughes restored integrity and dignity to State politics.

But public admission by A/E's demonstrating how to beat the supposedly efficient system legally was too much for the Legislature to condone. Between October and mid-January the bidding system was analyzed by many elected officials and Agency personnel.

Delegate Thomas Kernan (D), co-sponsored the House bill with Charles Avara (D). Kernan said "...it will be good to have the architects and engineers back on our side again, and not have to worry about when or how A/E's give us minimal service and look for fiscal loopholes."

Avara told the House of Delegates that for 20 years he has been chairman of Committees that oversee State design and construction funding. In 1974 he told them they would see their error one day and the exercise would be costly. "It was a bad knee-jerk reaction made in panic during an election year," said Avara, "and the sponsors led us into overkill."

Senator Kramer and Delegate Kernan repeatedly assured the Senate and House that "sunshine" will remain in the law. The system is open and will remain open. Fears that future Governors may not be as diligent as Governor Hughes are baseless because the potential for political intrusion and one-man rule was removed in 1974.

Delegate Avara said, "The A/E's have learned to watch closely and protest, without fear of reprisal."

Governor Hughes signed the Bill into law on May 28, 1985. Normally a new law becomes effective on July 1 (1985). The repeal of pricing/bidding in the selection process takes effect April 1, 1986 because the Agencies (DOT, DGS and all User Agencies) need time to write new rules and regulations, hold public hearings, and obtain Legislative approval.

From Maryland architects viewpoint, a number of key elements in the law are vital, and the Legislature agrees:

(1) The system will remain open via public announcements in the Maryland Register and one trade newspaper.
(2) Any qualified firm may submit its credentials for a project.
(3) Ultimate selection of a firm will be based on ability and experience; the best of the lot that applied for a project will be ranked # 1.
(4) A fair and reasonable fee will be negotiated with #1; if agreement cannot be reached with #1 the State will move to #2, and so on.
(5) An appeals process exists.
(6) All records and data regarding why the winner was selected will be available for public review.

Architects and Legislators agree that "sunshine" is the strongest guarantor of an honest and efficient system.

Maryland Society of the American Institute of Architects

P.O. Box 30899 Bethesda, MD 20814 (301) 654-3656 Ronald S. Ryner, *Executive Director*

Newsletter

Mr. DELLUMS. Thank you very much, Mr. Lawson.
We will now turn our attention to the testimony of Mr. Purnell, and you may proceed in any fashion you choose.

STATEMENT OF MARSHALL E. PURNELL, PRESIDENT, NATIONAL ORGANIZATION OF MINORITY ARCHITECTS

Mr. PURNELL. Thank you, Mr. Chairman.

For the record, I would like to recognize a colleague that accompanied me to this meeting, from the west coast, the west coast regional director, Mr. Harry Overstreet, who practices in San Francisco, in the Oakland area.

Mr. DELLUMS. We welcome our friends and constituents.

Mr. PURNELL. Mr. Chairman, my name is Marshall E. Purnell. I am speaking on behalf of the National Organization of Minority Architects, of which I am president. I practice architecture as a small businessman with the minority-owned firm of Devrouax & Purnell with offices in Washington, DC, and Atlanta, GA. Additionally, I am an active member of the American Institute of Architects.

I am also a former staff member of this organization, and for some 10 years, I was much responsible for developing the testimony that everyone to my left is presenting today. I know these gentlemen.

I have at this time the opportunity to speak to you on behalf of my persevering, courageous, ingenious, creative and noble minority colleagues across the Nation. For this, I feel privileged.

Persevering, because for the past 13 years, under the Brooks Act, and for countless years under previous systems, my minority colleagues have relentlessly sought their fair share of DOD contract dollars.

Spending countless hours and precious dollars sometimes earned by working spouses to prepare statements of qualifications or presentations to be told everything except "congratulations".

Courageous, because they refuse to give up in the face of odds my nonminority competition cannot begin to fathom.

Ingenious, because they manage to keep their doors open without work from private corporate America and DOD, the two largest procurers of A&E services in America.

Creative, because they continue to offer humane, fiscally responsible solutions to the needs of people who would otherwise be ignored.

And noble, because minority architects have watched other Federal agencies achieve close to 30 percent minority participation yet have not winced or cried aloud.

The National Organization of Architects stands firmly in support of increasing the share of minority earned contract dollars. If setasides will accomplish this, we are in support of them. If modifying the Brooks Act or the criteria used under that act will increase our participation, we are in support of that.

And last, if elimination of the Brooks Act altogether and establishing a price competitive system will bring minorities and truly small businesses a larger share of the DOD contract dollar—as

many of my colleagues now believe—then we will support that effort as well.

Before the Brooks Act, we were excluded because the system was admittedly "biased." We continue to receive far less than our fair share under the Brooks Act.

Many of my nonminority colleagues have argued to minorities that the present system is better than price competition, because selection is based on "qualifications." Well, it seems that qualifications are based on some very subjective and biased criteria.

I would like to quote from the Commerce Business document, dated August 23, 1985. This is an announcement of a project with the Corps of Engineers for the design of an enlisted barracks, with dining facilities and a Ranger fitness center, in Georgia.

Under this announcement, the criteria I would like to quote you, what is stated here, this is a project that is estimated at above $10 million.

Significant evaluation factors are in order of relative importance to the Government, No. 1; specialist experience in the type of work required. That means if you have designed an enlisted barracks with dining facilities and Rangers' fitness center, you have a much better chance than a firm that has not.

I don't know many minorities that have had an opportunity in the past, that is like the chicken and the egg, that is the most significant evaluation factor, that is No. 1; these are in order.

The second one: Capacity to accomplish the work in the required time. That is very subjective. I don't know how the evaluation committee can look at you in an interview and determine that your firm of 15 and this firm of 18 has the capacity or who could do it the quickest or first, I don't know if you can meet the requirements, I think you should meet the requirements.

Past experience with respect to performance and Department of Defense contracts. That is clearly kind of hard to have, past experience, that is No. 3

No. 4, location in the general geographic area of the project. That usually means being in the State or being in the county if it is a lot of firms, and no problem with that, that is just to say we don't want west coast firms doing east coast work.

And the last one, volume of work previously awarded to the firm by the Department of Defense. I don't know if this is a plus or minus. If its policy is to spread the work around, it is not working very well.

So, if it is a plus, then, to have previous work because you did a good job that is stated earlier on in the two. Those are the evaluations criteria that are going to be used for selection of this job.

It is very hard for minorities or small business or almost any firm who have never done work with the Federal Government to be selected under this criteria.

This is the Brooks Act.

The stone, cold fact of the matter is that for the vast majority of DOD projects, there are numerous firms equally or overqualified to do the work. The Brooks Act does not recognize this fact and that is where it breaks down. Biases creep into the system at this point and DOD, in addition to those being systematically excluded, are the big losers.

The architectural profession by and large is a small business. To change an existing definition of a small firm from one that already includes 96 percent of the profession to one that includes 90 percent of the profession borders on the ridiculous.

It is not surprising to find that DOD statistics show that small firms fair well in open competition. Small firms comprise 96 percent of the marketplace.

If they don't do it in open competition, who is going to?

It would seem that the issue is not one of reducing set-asides so much as it is one of targeting them. If minorities are being excluded and not "small firms," then the answers become obvious.

The Department of Transportation under former Secretary Coleman had a problem of how to get more minority participation in their agency. Former Secretary Coleman stated that the policy of DOT would be to have a minimum of 15 percent minority involvement on "all" DOT contracts.

What was actually achieved was close to 30 percent minority participation across the board and every selection was made utilizing the Brooks Act.

The law states that not less than 10 percent of the amounts authorized to be appropriated under the act shall be expended with small business concerns owned and controlled by socially and economically disadvantaged individuals. That is the law.

Why did DOD try to reinvent the wheel?

Mr. Chairman, I come before you representing minority architects all across this Nation. We have gone to some of the best schools America has to offer, and studied alongside our nonminority colleges.

We are required to pass the same rigorous State registration laws and we design to meet the needs and safety of all the people. Yet, we minorities in this profession are dying, dying at a time when DOD is spending funds for the services we can offer at an unprecedented rate and for a manpower I am told is 25-percent minority.

Minority enrollment is down in schools of architecture all across the country, and I am talking about down from numbers like 3 blacks out of a class of 120, as when I was in school. How do you go down from three?

In conclusion, the National Organization of Minority Architects does not, and will not, blindly support any method of procuring architectural services that recognizes a 100-year head start as "fair and equitable" at the expense of my present and would-be minority colleagues.

We are in support of any action this subcommittee puts forth that will address a positive change to the less than adequate status quo. I appreciate the opportunity to appear before you today and anxiously await questions you may have.

Thank you.

PREPARED STATEMENT OF MARSHALL E. PURNELL

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Before the Brooks Act we were excluded because the system was admittedly "biased." We continue to receive far less than our fair share under the Brooks Act. Many of my non-minority colleagues have argued to minorities that the present system is better than price competition because selection is based on "qualifications." Well, it seems that qualifications are based on some very subjective and biased criteria (Quote from Commerce Business Daily, 23 August 1985, PP 9, column 3, 2nd paragraph).

The stone, cold fact of the matter is that for the vast majority of DOD projects there are numerous firms equally or over qualified to do the work. The Brooks Act does not recognize this fact and that is where it breaks down. Biases creep into the system at this point and DOD in addition to those being systematically excluded are the big losers.

The architectural profession by and large is a small business. To change an existing definition of a small firm from one that already includes 96 percent of the profession to one that includes ninety percent of the profession borders on the ridiculous.

It is not surprising to find that DOD statistics show that small firms fair well in open competition. Small firms comprise 96 percent of the marketplace. It would seem that the issue is not one of reducing set asides so much as it is one of targeting them. If minorities are being excluded and not "small firms" then the answers become obvious.

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Mr. Chairman, I come before you representing minority architects all across this nation. We have gone to some of the best schools America has to offer, and studies alongside our nonminority colleges. We are required to pass the same rigorous state registration law and we design to meet the needs and safety of all the people. Yet, we as minorities in this profession are dying. Dying at a time when DOD is spending funds for the services we can offer at an unprecedented rate and for a manpower I am told is 25 percent minority. Minority enrollment is down in schools of Architecture all across the country and I am talking about down from numbers like three blacks out of a class of one hundred and twenty as when I was in school.

In conclusion, The National Organization of Minority Architects does not, and will not blindly support any method of procuring architectural services that recognizes a one hundred year head start as "fair and equitable" at the expense of my

present and would be minority colleagues. We are in support of any action this subcommittee puts forth that will address a positive change to the less than adequate status quo. I appreciate the opportunity to appear before you today and anxiously await questions you may have.

Thank you.

Mr. DELLUMS. Thank you very much for your presentation, Mr. Purnell, and the Chair would like to begin the questions with Mr. Whiteside.

Mr. Whiteside, you, obviously, are in support of maintaining the congressionally mandated $85,000 cap; is that correct?

Mr. WHITESIDE. That is correct, sir.

Mr. DELLUMS. Now, why is it that you believe that the recent action on the part of SBA to reduce the size standard for small business A&E firms from $7.5 million to $1.5 million would not eliminate the need for this mandated cap?

Can you tell me why you think that?

RULE OF TWO

Mr. WHITESIDE. Yes, sir, Mr. Chairman, you still have the rule of two in effect, and so, therefore, you would be excluding firms who would not have all of them capable to compete for the project.

Actually, we think that the real answer would be to eliminate the rule of two and let all firms compete for all jobs.

The $85,000 threshold or cap does create—small businesses today, they can compete for every job, and what this really prevents, the largest firms from coming down and competing for certain jobs, and we think that has resulted in a good distribution of work, but we would prefer to eliminate the rule of two, but we would say have the $1.5 million small business size, review it, test it, use it for a period of time, and then see if you want to make a further adjustment or then pursue to review the rule of two, as it applies to A&E's.

Mr. DELLUMS. Often, because of the manner in which the Armed Services Committee hearings are structured, we rarely have the opportunity for point-counterpoint, but we have that opportunity this afternoon, I would like to exploit it.

Mr. Purnell, what are your thoughts with respect to this $85,000 cap, because if I listened to your testimony correctly, you have arrived at a very different conclusion than Mr. Whiteside.

I would like for you to respond to the $85,000 cap and Mr. Whiteside respond, that removing all of this would allow you to effectively compete and obtain a fair share of contracts from the Department of Defense.

Mr. PURNELL. To put a cap at $85,000 in the A&E profession for saying that that is what small businesses can handle, and at the same time, when this was in effect to have a small business definition, I think, for architects, being, I think, $3.5 million for architects, as well as engineers, what we call full disciplined firms being 7.5 million, I don't know how many, 85,000 jobs or less, you have to do to get your quota, so to speak, to be still considered small business, but it would be an inordinate number to do in 1 year.

It seemed a bit ridiculous also to even be concerned with small versus big in a profession that is small. We have already stated my

numbers say 96 percent of the architect firms in the country are small business.

I think it was quoted by one gentleman at the table, it is the 8 percent. We are disputing whether it is 2 or 4 percent, and yet, DOD, being the largest procurer of A&E service is going into that marketplace asking for firms to compete openly across the board.

I personally—nor do any of my membership have any problem with competing with my larger colleagues. I think—let me shed a little light on what is considered large and small in this profession by those within the profession, not by SBA standard clearly in the architectural side, nearly 80 percent of all the architectural firms in the country are comprised of 10 people or less.

There are full service engineering firms that are considered small business or considered large business, I should say, that have staffs of over 200 people, yet they are architectural, contingent may be less than 20 people, and they are doing maybe 1 million projects with architectural staff of less than 20, but the rest are engineers.

What I am saying is one architect begins to support the other engineering disciplines such as electrical, structural, civil, acoustic, all of those are in support of what the architect is doing.

So, therefore, full-service firms, 200 people, that is less architects than I have on my staff. If you have a firm of 20 architects and you are just 30 or 35 architects, you have capacity to do a substantial amount of design work utilizing consulting engineers, and many of these firms that are now meeting affirms they have come to be known by their acronym, I called them this alphabet soup, not out of mockery, but out of envy, is that they came about because when they got to 30 or 40 architects only, it made sense to bring in the engineering disciplines that they were contracting out for in the beginning.

They then became a firm of over 100 people overnight, and they are now eligible for projects that the contracting officers who are doing the selecting assume now that they have the capacity to do because they have the services in house.

They had the capacity before. So, if we are talking about 80 percent of the marketplace being 10 firms or less, then we are going to have to be able to compete in the open market. My bone is really the criteria that is being used for the selection in the open market.

That criteria favors the large firms that have had 50- or 60- and 80-year reputations working for DOD. They asked for past performance. There are firms that can march into DOD and show projects that they have done in the thirties or in the forties, or in the fifties, under third and fourth generations.

Minorities, and particularly black firms do not have that luxury. We all know why. I am not here to argue why. I am here to determine how we can make the system equitable if we are going to talk about qualifications.

If you put me in a room with the gentleman to my left, and give us both the building program, and say emerge in 2 hours, and may the best man win, that is what I am talking about in the way of qualification, that neither speaks to what his reputation is as a firm, the people that may or may no longer be with him as a firm, what his parents, what his uncle, what—it gets down to this job today, who is best qualified to do it.

I am willing to compete with anyone in America under those standards.

Mr. DELLUMS. You are saying that the standards, that the definition of competition speaks to past history and tradition, the five criteria that you laid out clearly indicate that incredible bias toward firms of long standing, and that precludes minority participation for all the obvious reasons we don't need to go into, its history?

Mr. PURNELL. Exactly; the Brooks Act, to ease the conscience in the minds of my colleagues at the table, is not what the National Organization of Minority Architects is opposed to, the Brooks Act is fine if you establish criteria that addresses qualifications, that is equitable and the criteria, as I stated in the Commerce Business Daily, is more oftentimes than not, it is not something that what I would call anywhere approaching equitable——

Mr. DELLUMS. Mr. Lawson.

Mr. LAWSON. I would like to raise a couple of points, if possible.

Mr. DELLUMS. I appreciate this format. We get education as well as give-and-take, is important to us, because this is also an education.

Mr. LAWSON. We appreciate it, too.

It seems to me there are about three different points. One of them, we favor the $1.5 million definition size as opposed to the 7 million, which is, as Mr. Purnell points out, ridiculous in the architectural industry.

It does seem to me, however, since any size firm can compete for any size job, that to have a threshold of $85,000, which is arbitrary at best, we all know that, that specifically limit the intrusion of the larger firms into the level, does provide some of the ability for small firms to get involved and get started.

Speaking to the issue of the criteria for the Brooks bill, in Veterans' Administration work, in listening to some of the criteria in the Commerce Business Daily, in Veterans' Administration work, you may be familiar with this, they have a category of points for past work with the Veterans' Administration, and your past performance in Veterans' Administration work.

If you have never done a VA job, you automatically get the maximum of points which I believe is 5 or 10. So, you start up here and then you destroy yourself if you don't do a good job, so to speak; you start with a per record in the number of points which I think speaks to one of the issues here.

Mr. DELLUMS. Would you yield for just a moment?

To your knowledge, does DOD use such a point system?

Mr. LAWSON. I don't know specifically.

Mr. WHITESIDE. I can't answer that one.

Mr. GREGG. I think they do, but I don't think they will tell you that.

Mr. DELLUMS. Mr. Purnell's associate, would you come to the table, you can enlighten us on this. I want to get this point, then we will proceed.

Mr. OVERSTREET. Yes, sir; Mr. Chairman, it appears in the west coast that there seems to be a system used by the Corps of Engineers, a system used by the Navy, and then another system used by the Air Force.

The Navy, NAVFAC, to my knowledge, does not have a point system. Does not. The Corps of Engineers, to my knowledge, does not have a point system.

The Air Force, to my knowledge, does not have a point system. Veterans' Administration does have a point system. But I think it is fair to understand that a point system can be manipulated.

Mr. DELLUMS. You want to explain that?

Mr. OVERSTREET. If you have done a satisfactory job for the client, the client will give you 4 points less for doing the job, but giving you 80 points here because they want to hire you.

So that the end tabulation comes out to be whoever they want.

Mr. LAWSON. That has not been my experience, and I have found that all record for VA interviews are open, I have gone back myself and passed through an interview to see what my rating was compared to others, and I have had no problems at all, but I do think that this notion you start out without an assumption, that you get the maximum of points having never done any work, is a good idea.

Mr. DELLUMS. You were making several points.

Mr. LAWSON. The other points, it related to the point system that I am familiar with in the VA, is it the matter of proximity to work, the proximity to the job, you get so many points if you are close to it versus farther away, I think it is a fair system, which was addressing Mr. Martin, Congressman Martin's questions this morning; I would be happy to answer any other questions regarding my comments.

Mr. DELLUMS. Any other input on this particular item?

Mr. GREGG. Mr. Chairman, the Defense Department does have a policy to spread the work, and if two firms, if you have a job, because we have been cut out on many jobs by having a project with them, and may be qualified and may be short listed, but a consideration is a fact that you may have a project or you have had so many projects. They develop a keep and very close record of that, because I have been to see them, and they have pulled it out, and said, you have had a job here, and this firm didn't have a job, I know that.

Mr. DELLUMS. Mr. Purnell, what impact would the change in the size standard have on the A&E industry as far as competing for Department of Defense contracts?

Mr. PURNELL. I can speak from the standpoint of minority firms, minority-owned firm of which I am a principal.

I don't think it would have a significant impact on my ability to get more jobs or my colleagues across this country, if the standard was at $85,000 as it is now, or if they reduced the size standard from 3.5 to 1.5. It has been stated that that still is going to include 90 percent of the architectural firms in the country; it is going to include 99 percent probably of all minority architectural firms in the country still, at 1.5 percent, $1.5 million, so it is not going to effect minorities across this country in any significant way.

I think the only thing that will is criteria that is used in DOD selections when those five people get together and start looking at the 254's and 255's that have come in. They are using the criteria that whoever can show them the most pictures of the project that are similar in nature, and who has the best presentation. I have

gone in and competed against firms that have more people in their marketing department than I had on my staff, and they put charts and drawings and slides, they take helicopter rides to the sites and photographs and montages and these are all things that the 254's and 255's were to eliminate when the development of those forms.

Some 10 or 12 years ago, when I was on the AIA staff, I worked to support the development of those two form system to begin to eliminate some of the biases toward large firms that are now creeping back into the system.

At one point, there was no such form, you just submitted what you wanted to and big firms submitted volumes of information that inundated the selection committee. Small firms could submit only their honest credentials as being professionals. That system now, the 255 system, I think, is being totally abused. The last part of that form, the 10 sheet, if you are familiar, allows you to submit additional information that you think should warrant your justification for getting the job. There are firms that are spending anywhere from $10 to $10,000 putting those submissions, going after projects when the form was supposed to be a standardized form.

That alone says that something is not right. The presentations themselves, I don't know if you have ever sat through an A&E interview for the selection of a project, and that is something you should probably do, it is an experience.

Mr. DELLUMS. Thank you very much.

Mr. OVERSTREET. I would agree with Mr. Purnell, Mr. Chairman, that that threshold is not important, the question is whatever system is used to hire majority firm, why doesn't that system work to hire minority firms if there is a commitment to hiring minority and minorities have an opportunity to participate where they spend their tax dollars?

That becomes the bottom line. If one system worked for one, why can't it work for another without the bias? I am a principal in a minority firm in San Francisco, and have been in business for 15 years.

During that period of time, we have done a variety of type of work, but I cannot show 15 types of projects, or 16 types of projects, of one type, Marshall read from the Commerce Business Daily one particular project.

If we can't begin to do those projects, we will never have the experience, and I would venture to say 80 percent of the large firms that will be qualified for that cannot show the same staff on five of those projects that a different staff person will do that project for them, because the history in A&E offices is probably about 5 years maximum for a person, and then it turns over, so it is a farce when you come out and say, give me your qualifications when the principals of the firm are not going to sit down, and to them, because they are out dealing with the clients marketing or coming before to testify or some type of seminar they are there, project architects, who have only been with them for a certain period of time, they take the bulk of responsibility.

If they can do it, why can't we do it?

Mr. PURNELL. I have one more point to make. I did touch in my prepared statement on this, I would like to respond upon, because I

think it is a very important thing here, when we start talking about the ability of firms to do the actual work, the small firms.

I am trying to find it. I want to cite it here.

Mr. DELLUMS. While Mr. Purnell is trying to find the data, the Chair would like to ask one question.

Mr. GREGG. My observation is we are not here, we are not against the set-aside, 85 set-aside, we like the Brooks law, and we don't want to meddle with that frankly, and if they have a problem with the set-aside, then we will address that, too, but that is the reason we are here is because we do like the Brooks law, we think it works.

Mr. DELLUMS. As I understand the testimony of Mr. Purnell, he is saying several things. One, this controversy over the cap from this perspective is irrelevant, and the discussion of the size standard, the firm is irrelevant from their perspective, what they are saying is that the criterion that was developed for the selection of a firm to do the project is what is important, and I would appreciate it if you would comment on that assertion, and if you agree with it, I would like to know from your perspective what changes in the criteria would you see as fair and equitable that would allow you and this gentleman to compete on equal footing that would not have a heavy bias toward history and traditional and larger firms?

Is that a fair question?

Mr. WHITESIDE. Yes, it is, Mr. Chairman.

You know, with the engineering societies, we represent the broad firms from one person on up, and so, we are not talking about large firms or small firms, but the Brooks Act itself does not stipulate the five categories or any categories that says you are based upon your qualifications and of your staff and your experience.

It should be taken into consideration. I can give you a family experience. My son is in business for 2 years with a small firm; they have a Corps of Engineers proposal admittedly. He knocked on the door and submitted for about a year.

But also, one I am speaking of, one Corps of Engineers district, I believe they give out 70 projects a year; they sort of make the statement that they reserve at least 10 of them for firms who have not had a job before.

I think in terms of Mr. Purnell, admitted CBD announcements are very skimpy. That is one of the reasons why you really want to go to a Brooks Act procedure, because once you are selected, then you go into a full scope of work, and then develop your—negotiate your fees, perhaps—that you could put two or three more paragraphs in the announcement.

I have raised some of the same questions he has, and they say, well, we have the many criteria, they select each criteria they are going to use to select the firm, these are 5 months important for this particular job.

There is, like I read one down in Georgia, because I am nearby on that, and that, you know that the project, that type, is probably going to go to a Georgia firm because of the proximity to that particular project, and the type of project.

It was a project of national significance, like Fort Drum, New York, or something like that. Then I think it would open up farther.

But there may be some improvements needed, but we really think that, for example, I think the average project of small business firm last year was about $81,000. I think the large project, so-called major firm, was $60,000, and the small business firms are permitted to compete all the way up the line, any project, and I agree, like some of my colleagues to my right, Mr. Lawson, he does not have engineers on his staff, he has all architects, planners, any job he gets, he is going out and using other firms and some firms have the full services architects and engineers to do the entire project.

So, there is a difference in firms. We are supporting right now that you keep the $85,000 threshold until you have more in-depth review of the rule of two and its relationship to the whole process.

Also, I believe that the Secretary of Defense is to review this $85,000 level and make periodic changes in it. I don't believe that they propose to change that now, and DOD this morning testified that they are perfectly happy with the process as it is right now, and we are maybe not happy, but we are willing to pursue the same process, for the next year or so, while you look into it further.

Mr. DELLUMS. Thank you.

Mr. PURNELL. I would like to just comment here again, expanding my written, prepared testimony where I mentioned that where Brooks Act begins to break down. Here again, I think that if you are selecting architects or professionals based upon qualifications, then you should establish a criterion that clearly recognizes that there are differences among us as to the way we practice, what we look like, but it does not begin to impart those biases on who gets selected.

It is my contention, and I would ask my colleagues at the table to comment on it, that the vast majority of DOD projects are projects by which there are a number of firms qualified to do. I don't know how you can take a barracks which is no more than a Holiday Inn without the sign, and say that a firm that has been in practice for 5 years and has professionals on their staff, is not as qualified as the firm that has been in practice for 8 years, or a firm that has done two or three, it is not as qualified as the firm that may not have done any.

I am talking about structures and facilities that any architecture student could begin to design. The Department of Defense also builds warehouses, very complicated things like that, a concrete slab and some metal siding and lock span joints, they built those kinds of structures, too, and they get 40 and 50 design firms competing to go after those works.

That project for instance. Because it is a large project or a large warehouse, it means $10, $15, $20 million, that means that you need more paper, or you need more concrete to build, you don't need more expertise necessarily.

Those are the projects that I am talking about. They comprise the vast majority of DOD projects. I am not talking about the difficulties of nuclear waste or EMP shielding in case of nuclear disasters, these are projects by which I think you should have the qualifications that say you need the technical expertise and we need to evaluate that very closely.

Who has that experience, where can you go to get it? We are talking about a majority of DOD projects. You get 40 design firms going after a warehouse, that is $10 million, because it is big, and the Brooks Act breaks down very quickly, because the Brooks Act says we are going to go through the 40 firms, we are going to find the one that is best qualified to do this job.

There is no way, gentlemen, once you get committees that look at the initial 254's and 255's, I have been told by DOD officials who review this that that first pre-screening is no more than looking at these forms and making sure that you fill in all the blanks, and if you didn't, it goes into, the trash, and that is fair enough, that says if you can follow directions, you are going to be considered, if you can't, you won't, I have no problem with that.

Now, we are down to instead of 40, we have 35. Some people forget to sign their form. That has happened to our firm before. So you got 35 firms, all of them long-standing, going after a warehouse, and you have got different people in a room going to sit down and decide who gets it, based upon whose most technically qualified to do this job.

Something is wrong here. Because, at that point, if you got 35 firms and you short list now down to 10 or 5 and down to 5, and you invite them in for interviews to make a presentation about how qualified they are to do this job, it would seem to me you could take those 5, 10 or even 30 firms and at some point, ask them for something other than technical qualifications in the best interest of the Government.

Maybe it is priced at that point. These gentlemen have not mentioned on the private sector our clients are asking us for price all the time. And the set-aside program out there on the private side of things, that is what I call it. When they decide they want to build a new facility, they don't put an ad in the paper, they call people they know or people they feel are going to work with them on this job. Usually it is a brother-in-law of the executive, I can't compete on it openly and no one is refuting the fact private corporate America is on the set-aside program and always has been. They do ask you for your price at some point, you don't go in there, we are going to negotiate openly, they ask you for how much it is going to cost, many times they are asking you and ask your competition nobody at this table ever turned down the opportunity to submit a price when they look like they may do $30 or $40 million office building for private corporations, compatible saying once you accept the facts under Brooks procedures, that you have now identified those firms, plural, but many of these jobs you couldn't identify many firms that are qualified to do this project at that point, you need to look at something else to evaluate, who should get this project.

Because, it is an impossibility, we are fooling ourselves to say that we are going to go through this procedure, of Brooks Act at some point define out of 40 firms that went after the warehouse who is the best qualified to do it.

Because the best qualified historically has not been a minority firm. Something is wrong.

Mr. OVERSTREET. I think our colleagues to my left sort of indicate the problem. We indicated his scn after 2 years being in business,

received a contract from the Corps of Engineers, our firm personally applied many years, often before we even got considered for a project, and only then have done one.

So, the question is, if they can bring in new firms and firms of majority era, in a very short period, why can't they do it with minority? At the present time, Mr. Chairman, I do not know of any black architects in northern California, that are doing any work for the Corps of Engineers.

I know many that refuse to apply because they realize it is a waste of their money. The question is how do we get in the door, how do we get the same treatment under whether it is Brooks Act or pricing or how do we get in.

Mr. DELLUMS. You have asked, you have asked Mr. Whiteside, Mr. Gregg or Mr. Lawson to expand, and I want to give them the opportunity to do so, then I would like to come back to you, Mr. Purnell and ask you, since you allude to the criteria, can you lay out for us on the subcommittee what criteria you think would be fair and equitable criteria that allows you to compete effectively.

You make an extraordinary compelling argument because I agree with you that building a warehouse is not an extraordinary thing, and we know that we approve funds for the construction of incredible numbers of barracks and warehouses, to the tune of multimillions of dollars, and if you are saying that you can't get your foot in the door, when obviously your credentials would lead one to believe that you have this basic expertise, to build this, I like your phrase, Holiday Inns without the signs, if I use it again, you may not get credit for it, but—that you make a compelling argument, I would like to come back to you and ask you——

Mr. WHITESIDE. We don't have an adverse position with them, we think everybody should have open competition and we are not trying to preclude minorities or any group in our presentation.

Mr. DELLUMS. I was not trying to juxtapose you in a hostile environment, but if in this situation, what we can do is from different perspectives, obviously, that is what I am interested in more than placing you in a hostile juxtaposition, your experience is different and I would like to draw on that.

Mr. WHITESIDE. If my architectural colleague has tried for 10 years and not gotten a job, then something is wrong, either his qualifications or the people who are judging him. That has not been my experience in firms that I have none that have tried to get Department of Defense work, admittedly, I guess down in Kings Bay, that the submarine base, I believe jobs they get as many as 70 responses to the work down there, one single project, but they do have some criteria they go through on the amount of work you have ongoing now, amount of work you have had in the past several years, and proximity, and—I have found that it appears that—I have lost as many or more jobs than Mr. Gregg has, it is to give people opportunities.

Now, this is the minority firms are not—I think this is an area that should be explored, because all our societies have taken a position of bringing minority firms in to more and more projects.

Mr. DELLUMS. Anyone else like to comment?

Mr. GREGG. Mr. Chairman, I would like to point out, I think it was last year that more than 11 percent of the DOD work went to

8(a) set-aside and I also like to say that I called on the Corps of Engineers for about 10 years before I got a job, too, and I called on the Navy a long time, and so, I don't think it takes a long time to get known to these people, once you do, and they give you a job, then you do get other jobs, but they don't. I have always felt they were fair, the Corps of Engineers, they were very fair in their dealings, I have always felt that.

Mr. DELLUMS. You have in part answered the committee that one of our colleagues requested that the Chair asked in his behalf, Mr. Whitehurst was here briefly, but as a result of other pressures on his time, was not able to be here. Mr. Whitehurst asked me to ask you, Mr. Gregg, this question, and I think your later comments have addressed at least part, you state, that I understand that your firm at one point was a small business, by virtue of an acquisition you are now considered part of "large business," did you have problems competing for DOD contracts when you were considered small business?

Mr. GREGG. When we were considered small business, we competed right along with the rest of them, and we did get, I considered our fair share. As I said, I did, as I was president of the firm, I did quite a bit of business development, and I would call on my friend at Navy for instance and complain about not getting jobs; and he would reach down in his desk and pull out a little sheet of paper and started reading off what firms did get jobs and sometimes I would go out there a little embarrassed because we did have jobs that other people hadn't gotten.

So that is one reason why I said it was fair. After we become big business, we did not get any work for a couple of years. We operate as a subsidiary of this firm under our old name, but they still consider us part of the larger firm, and we operate completely separate from them.

Mr. DELLUMS. Thank you very much.

Mr. Purnell, I would like to get a sense of the kind of ideas that you have with respect to what you perceive to be criteria that would make the process fairer and more equitable.

Mr. PURNELL. Well, I will preface my remarks by saying I didn't come prepared to list all the criteria. It would take sitting down and working with a lot of people, including the types of people represented at the table, to present something I would feel would be fair.

Mr. DELLUMS. I appreciate that, and this is an issue that is not going to go away overnight, and obviously we are not going to resolve it overnight, and I certainly would appreciate it if you have the—I am sure you have the disposition, and the time—I would appreciate it if you would submit this list so that as members of the committee carrying on our oversight responsibilities on the one hand, and trying to establish appropriate legislative policy on the other, can try to face this issue squarely, and I would appreciate it if you would submit that kind of list to us for the record.

[The following information was received for the record:]

NATIONAL ORGANIZATION OF MINORITY ARCHITECTS,
December 3, 1985.

Hon. RONALD DELLUMS,
U.S. House of Representatives,
Washington, DC.

Re: Minority A&E involvement in Department of Defense Construction Programs

DEAR CONGRESSMAN DELLUMS: I would like to thank you for the opportunity to appear before your recent sub-committee hearings regarding Architectural and Engineering procurement for the Arm Services. I am most appreciative of the open exchange you encouraged after formal remarks had been given by all.

Members of the National Organization of Minority Architects, (NOMA) from all reaches of this country met and discussed many of the issues raised at those hearings. Additionally, I have met with the Committee on Federal Procurement of A&E Services, (COFPAES) at their invitation to discuss the issues raised during that open exchanges. COFPAES has stated a willingness to work with NOMA in structuring criteria for selection under the Brooks Act that fosters non-discriminatory opportunities for minorities. To this end, NOMA will work with COFPAES in trying to identify exclusionary criteria being used for selection and will bring this to both your and the offending agencies attention.

I have received much feedback from our membership as a result of internal NOMA meetings and those with COFPAES and there is one resounding consensous among my consitituency: Minority involvement in DOD's A&E Procurement Program will not increase significantly unless it is required, either by law or by policy. Our membership endorses a publicly stated DOD policy of minority participation as a requirement on all DOD contracts.

We are fully aware of the far reaching implications of this policy should it be put into effect and have discussed many of the arguments for its modifications. These include restrictions on project size, project location, firm location, project complexity, past performance if applicable, etc. In all cases, where our members have identified successful programs which involve minority participation, there has been a "requirement" for such.

Please take note that this suggested DOD policy does not require any modifications to the Brooks Act (PL92-582). Every selection now being made under that law could continue with the added singular criteria that minority participation is required. This has worked well within other Federal agencies such as the Department of Transportation and numerous municipalities. Again, we see no reason to try and reinvent the wheel.

NOMA, and I personally stand ready to assist you in any way we possibly can in resolving the issues that have come before your sub-committee. Thank you again for the equal opportunity to participate.

Sincerely,

MARSHALL E. PURNELL, AIA, NOMA
President.

Mr. PURNELL. I would like to mention that my national organization, NOMA, is meeting next month for 3 or 4 weeks and this will be a issue that we will address in that meeting, and therefore, we will get sort of the national input from minorities around the country. I will make sure that it is an agenda item and that you are presented with the outcome of that meeting as I present it to the AIA, and to companies and other organizations I think representing this profession.

But the criterias, I think the bottom line, if I can sum it up in a statement, would be demonstrated understanding of the project and thereby the technical professional qualifications to accomplish the work.

I think we should look at the history of your firm with doing any project, not just projects that have Holiday Inns or warehouses that are similar in nature and scope. Most buildings are comprised of pretty similar materials. You have a ceiling, you have a floor, and you have some wall systems, and if you have done that, you

have done that consistently for 10 years, for varying clients around the country.

Most minority firms are doing Government work of some sort. Usually it is municipal or State government work. We are locked out of private corporate America for the most part. I can count on my hand the firms who have done work for private corporate America. I am talking about Fortune 500 or Fortune 1000, projects of any significance.

So I think you should look at and begin to look at whether a firm has a history of getting the project done on time, and within budget, no matter what the project is. If we are forced to work with incredible budgets as minority firms—here are clients that come to us with budgets that many of my colleagues would probably laugh at. They would say there is no way you can do it. We are pulling off incredibly creative schemes to get projects in on budgets that the Federal Government isn't building on those budgets, that people can go to us and we are solving those kinds of problems in various ingenious ways.

I think the Federal Government, Department of Defense is loosing out on a very significant segment of the market because my colleagues are doing fine work around this country. I think we should look at those projects in light of how you perform on those jobs, what do your clients think of you. Not once has any Department of Defense agent or contracting officer or anyone ever called one of my clients and asked them what do you think of Marshall Purnell or Deb Purnell, what kind of job have they done for you? That is a very high test as to your ability to do work, what your clients think of you.

You are no better than your last job in this profession. We don't bury our mistakes, they stand for 20 or 30 years, and if no one is looking at those and talking to the people we work for, I don't know how you evaluate these firms fairly. Short of this would be a very expensive process on the administrative side of things, but administrative dollars when you start talking about the dollars that are involved here on the construction side, and dollars that we as professionals are being locked out of, begin to get very small, when you begin to compare them.

I am talking about putting a team in a room, or two or three teams in a room and saying, give me your best written statement or your best estimate of how you are going to do this job, and evaluating that, putting the staffs of the people, you say this person is going to be our project architect on the job. He is going to be the manager on the job, sit down and interview him. Interview the people you say are going to be in charge, don't interview me, a principal. I come in and give you a song and dance about how great we are and you won't see me until the project is being presented. Talk to the people who are going to actually do the job and hold them accountable.

I can get into a whole lot of other things, too, and on the surface, I am not really opposed to price at some point, but I think it is highly inappropriate to talk at the outset. I agree with each at the table it will become a factor whoever is lowest bidder, and initially minorities would benefit by that substantially very quickly, but it would begin to tail off.

I think because, they may not admit it but I don't have the overhead many of the large firms have, and I can do a project cheaper and sometimes make money and sometimes give you the same quality, if not better. But that won't last too long, then there will be some other firms that will learn how to get lean and learn how to submit a low bid and make money.

Initially the large firms trying to eat every job and take all the low ones from the smalls and eat them and lose money, and we told you that it wasn't going to work. They could do that for about 1 year or 1½ years, and they are going to quit going after that. They can't make any dollars with their overhead the way they are. I think in the long run the Government would lose out and so would minority business. Initially minority participation would go up.

Mr. DELLUMS. Thank you very much.

The Chair would note there is a vote but what I would like to do, Mr. Lawson, I do have one additional question I would like to ask of you. If we have any further questions we would submit them to you and ask you to respond in writing.

Mr. Lawson, in the prepared remarks that you submitted to the subcommittee, you stated that without the qualification based procurement procedure, public buildings are likely to be more expensive to build, to operate and maintain and their design is far more likely to be unimaginative, uninspired and inflexible to use your terms. Can you tell us why and explain that?

Mr. LAWSON. Certainly.

I believe that when you submit price as part of the factor and you are selected on the basis of price, you can only price that which you have defined within your price. In other words, the lowest criteria, the lowest dollars. In order to establish a price on any project, it is the cost times the quantity or the quality times the quantity that gives us the cost. That is the equation for my price submission. Something has to give.

It is my belief that—I have seen this happen in other areas—the more price becomes the dominant selection factor, the more you say well, I am going to have to give you one design or two designs, but I am not going to work until the thing is completed. This testimony was presented by me but by architects and engineers in Maryland on their 11-year experiment, and in fact, they found that they were coming back with changed orders for additional design work that wasn't properly defined. One, the scope of the work set up by the State. It becomes the whole problem of trying to bid architectural and engineering services. You cannot define scope of work adequately to get a good price on it, it cannot be done.

Mr. DELLUMS. Thank you very much, gentlemen.

As you are aware, Mr. Bedell plans to offer the amendment dealing with the $85,000 cap on the fiscal year 1986 military construction authorization bill, which will come on the floor once the issue of the conference report between the House and Senate on the overall military bill is resolved. The Chair would assume that that would hopefully be sometime next week so that the Chair will, assuming we will come to the floor with the bill sometime next week or certainly not later than early the week after.

With respect to the second part of his concern, which is the two-step selection process—those of you who were here this morning, you know that he has agreed to pull that amendment back so that we can better consider the implication. He will submit a piece of legislation to this subcommittee. We would then hold appropriate hearings. We certainly will contact all of you who are interested in the matter so that you can fully participate to the extent which you choose to in those proceedings.

Having said that, the Chair would like to thank you, Mr. Purnell, Mr. Overstreet, Mr. Lawson, Mr. Whiteside, and Mr. Gregg, for your participation in these proceedings. You have been very generous with your time and we appreciate your response to our questions. What we are trying to evolve here is something that speaks to fairness and speaks to equity.

The Chair hopes that none of the questions are interpreted as hostile. What we are trying to do is become educated and what we want to do is be part of the educative process so that we can be advocates of a policy that makes sense. Obviously, we are concerned about increasing the participation of minorities and women, not the largess of the Government. That is obviously a concern of ours and is obviously an issue at a time when the country is dominated with the politics of budget deficit reductions, and moving away from social program orientation.

The Chair suggests that you can't walk into the side of the street if we are saying we don't want the welfare state and people said you give us an opportunity to be entrepreneurs so that small business, historically, will be able to employ a large number of people. If you lock them out on that side where can people punch into the process?

So it is the concern of the Chair that we address these matters in very clear unequivocal terms, and do it aggressively, and your participation in these proceedings hopefully will move us along that course and the Chair, on behalf of myself, the members of the committee, many of whom are not able to be here—as someone said, welcome to Washington. The unfortunate reality is we have to be in more than one place at one time, and the farm bill is on the floor. That is a very important piece of legislation, so do not interpret the lack of presence here to any lack of interest and concern, because we do come together in this committee. It is a very well attended committee. We all work very diligently in this regard.

We thank all of you very much for your participation. There is the second bell and the subcommittee will recess for approximately 10 minutes, and then we will convene the last panel and that will wrap up the business of the subcommittee for today.

The subcommittee will resume its business. We will begin by bringing up our final panel for this afternoon: Mr. Ralph C. Thomas III, executive director, National Association of Minority Contractors, Washington, DC; and Mr. Douglas M. Bodenhamer, Associated General Contractors of America, Columbus, GA.

We welcome both gentlemen before the subcommittee. If either of you have any members accompanying you in the testimony, we would appreciate it if, at the appropriate point, you would identify those persons for the record.

We would like to welcome you before the committee. We do have copies of your testimony, Mr. Bodenhamer. Without objection, the full text of the gentleman's statement will appear at the appropriate point in the record.

We will begin this final panel with testimony from Mr. Thomas, and I would like to welcome you, and you may proceed in any fashion you choose.

STATEMENT OF RALPH C. THOMAS III, EXECUTIVE DIRECTOR, NATIONAL ASSOCIATION OF MINORITY CONTRACTORS, WASHINGTON, DC

Mr. THOMAS. Thank you.

Good afternoon, Mr. Chairman. First of all, it is indeed a pleasure to testify before this committee. I apologize for not having any prepared remarks. I will submit something later.

I was recently appointed executive director of the National Association of Minority Contractors, within the past month, and have been working out the transition. At this very moment, our own board of directors are meeting to plan strategy and implement some of the same things that were stated here. So, it is a pleasure to be here.

I thank you, Mr. Chairman, for having both the insight and the courage to inquire into such a sensitive but crucial subject area.

As I stated, I am the executive director of the National Association of Minority Contractors, otherwise known as NAMC, located here in Washington, DC NAMC is a 16-year-old organization. We are purely a service membership trade association. We represent more than 3,500 contractors in 40 States, the District of Columbia, and the Virgin Islands.

Now, an integral part of our mandate is the facilitation and creation of jobs in America through the procurement of business opportunities for minority firms in the construction industry. We are committed to develop and implement strategies for the procurement of business contracts by minority firms in both the public as well as the private business sectors.

When I was informed of the topic of these hearings, the first thing that came to me was that was a perfect topic for a proposal. First, are minority contractors getting their share of military installation construction contracts? If not, why not? And what are some of the basic concerns?

Since we didn't have time to do that on a more long-term, organized level, what I did was contact some of our largest contractors and some of our small ones who had the most contact with military installation construction. Now, their views and comments I found very insightful. They gave me a variety of things that they had problems with. But I will focus on one at this hearing, and that is the relationship of the minority contractor who is a subcontractor to the prime.

We are assuming now that a bid has been awarded, or a contract has been awarded to a major prime contractor, and that there are minority participation goals attached to that contract. Now, the first problem in that situation is that these contractors have related to me that there is, first of all, no way to measure the prime

contractor's actual good faith in finding minority subcontractors to fulfill that goal.

For example, even in my short experience of being executive director of NAMC, I received a call from a contractor, a very well-equipped minority contractor, who said, "Mr. Thomas, I understand that a certain base has awarded a contract, and there is a 35-percent minority goal attached to it. I would like you to follow up on that to inform me who the awardee is so I can approach him to do some of the work."

The problem in this kind of ordeal is that there have been many complaints that the prime contractor does not actually make the good faith effort to get out there. I have heard—I have had communications from contractors where it was stated that when the minority contractor called the prime, the prime asked him how did you find out about us. So what they are looking for, or what we are looking for is some kind of criteria to define good faith.

There is a bill that has been offered in California, I think by Assemblyman Harris, to do something along this line, in terms of measuring good faith. It has been passed by one house; I think it is ready to come up before the Senate. But we will track that bill very carefully.

Now, after the first problem, the fact that there is no criteria defining good faith in meeting minority goals, contractors have also complained of no surveillance of the subcontractor bid process to the prime. For example, one contractor submitted a bit to a prime, did not get the award of the subcontract, only to learn later that he, in fact, had made the lowest bid.

Now in a lot of these problems that I am going to bring up, the minority subcontractors do have a legal recourse; but, in most cases, for a minority contractor a legal battle pretty much puts them out of business. I have been a lawyer. I am a lawyer by trade. And I represented minority business enterprises, mostly construction, in the past, for the past 5 years, and I know that a legal battle can put them out of business, because they almost put me out of business by the financial strains that they had in meeting legal expenses.

The next problem is that even after they get the bid, or if they get the subcontract award, there are even more problems, and there is no control. There is potential abuse, and there is presently no setup other than legal to control that abuse.

For example, there have been complaints of, No. 1, back-charging. That is a process in which, after the job is already done, the minority subcontractor is waiting to be paid, and the prime contractor will say, well, you broke this, you didn't do this right, or this was damaged and that was damaged, thereby cutting down the money that they would have to pay them in the end.

That is, a subcontractor is owed $50,000 as his last payment. That is a method by which an incident would happen, as I just described, and the minority subcontractors would only receive $40,000 or $45,000, which is really devastating to a minority sub.

What this does is it puts minority subcontractors in a catch-22 situation. If he complains, there is a real possibility that he will not receive subcontracts in the future. If he does not complain, he

faces the prospect of being treated like a second class citizen for the rest of his business career.

Now, the problems that I have named, which many minority subcontractors have with prime in military installation contracts, are the same problems that they have in the private sector. However, in the Government sector, when the U.S. Government says that we are awarding this contract on the condition that you try to give 35 percent of the work off the subcontract to minority firms, that puts some kind of seriousness on it. If the Government is really serious about this, then contractors would like something done, some kind of way in which they can be protected either before they get the award, and actually seeking them out and finding them, or after they receive an award, in terms of protection, protection during the contract.

They have recommended to me either some kind of code of conduct or some kind of Government ombudsman, some simple, quick process by which a subcontractor can go to the Government, the Government ombudsman, and say, "This is what is going on here, Roger. I am filing something. Please take care of it." The problems can be handled swiftly and in an uncomplicated manner.

Mr. DELLUMS. Would you yield at this point?

Are you saying in this latter area of protection that you are talking about protection from being denied the subcontract, even though you are competent and you have the low bid?

Mr. THOMAS. Yes, sir.

Mr. DELLUMS. And the abuse, you used one example of backcharging.

Mr. THOMAS. Yes, sir. And another one is what is known as accelerated scheduling in which the work is accelerated to such a point that the minority subcontractor cannot comply, and as a result he is in breach of his contract in the sense that he can't perform. In some cases, he can be dropped from the contract.

The only recourse is legal. So we would recommend that it would really help to have some kind of guidelines for treatment of a prime to a sub, and then some kind of oversight of such treatment.

One other thing. You named two things: First of all, the sub getting the award; and second, the abuse after he has the award. There is another one. The good faith effort criteria—defining "good faith effort," what exactly did you do to meet your goal of minority subcontracting, because there are some prime contracts out there, believe it or not, that resent the fact that there are minority setasides, that there are minority goals attached to a contract, and being resentful anyway once the subcontract is awarded the minority subcontractor can expect abuse in many cases and has no other redress other than legal.

So that is the gist of my comments, Mr. Chairman. I wish we had had something more expanded and supported and documented. We are certainly working on that, and we will continue to provide you with information in the future.

Thank you.

Mr. DELLUMS. The Chair would like to thank you for your opening remarks, and also indicate to you that we plan to keep the record open on these proceedings for a while. So, if the gentleman's

wish is to submit additional testimony, you will have the opportunity to do so.

Mr. THOMAS. Thank you very much, Mr. Chairman.

Mr. DELLUMS. Mr. Bodenhamer.

STATEMENT OF DOUGLAS M. BODENHAMER, THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, COLUMBUS, GA, ACCOMPANIED BY JOHN GENTILLE, STAFF, ASSOCIATED GENERAL CONTRACTORS OF AMERICA

Mr. BODENHAMER. Thank you.

Mr. DELLUMS. Welcome to the subcommittee. As I said, we do have your full text of your testimony, and we have received, without objection, the right to place the full text of your statement in record. So, you may proceed to summarize, or you may read the full text of your statement. The floor is yours.

Mr. BODENHAMER. Thank you, Mr. Chairman.

In the interest of time, I have a short synopsis of the prepared testimony you have in front of you which I would like to address to the subcommittee.

My name is Douglas Bodenhamer. I am a small business contractor from Columbus, GA. I am president and chief executive officer of Bodenhamer Building Corp., which has been in existence for some 10 years.

Prior to that time, I was executive vice president and chief operating officer of another small business construction firm, which in 1974 was named as Southeast United States Small Business Contractor of the Year by the SBA.

I am here today representing the Associated General Contractors of America. I am accompanied by John Gentille, on my left, who is on the AGC staff here in Washington.

Mr. DELLUMS. I would like to welcome you.

Mr. BODENHAMER. I have two basic reasons for appearing before you today: First, to inform you of the construction industry's long-held belief that it does not need the protection of the Small Business Set-Aside Program; and second, to alert you to the counterproductive manner in which the Department of Defense and Small Business Administration are administering set-aside programs in the procurement of construction.

The construction industry is truly one of the last bastions of the free enterprise system, and as such is a natural haven for small businesses. This industry is typified by family-owned businesses which jealously guard their integrity and reputation in the community, in an extremely competitive and open industry. Construction is not dominated by a few firms, rather it is dominated by the open competitive bid system. That is, competition in terms of price and ability to complete the task determines which companies win contracts.

The industry is also one of but a few that permit an individual—any individual—to make a start with little or no capital. An emerging construction firm generally uses credit to buy materials and arranges for short-term loans to pay for equipment rental and labor costs. This ease of entry into the industry helps to safeguard and assure competition in the industry.

In the construction industry, small businesses are extremely competitive. They are quite capable of competing head to head with firms that do not qualify as small according to SBA's ever-changing definitions. In the private sector, there is no such thing as a set-aside program. Here, the open, unrestricted competitive bid system determines which firm will be awarded the contract. In the private sector, smaller construction firms thrive and are able to obtain a fair proportion of the available market.

AGC believes these facts lead inescapably to the conclusion that the characteristics of the construction industry assure ample opportunity for qualified contracting firms of all sizes to obtain a fair share of Federal construction outlays.

In other words, the Small Business Set-Aside Program is not needed in construction. This is the position AGC has maintained since the set-aside program began, and this is the position AGC holds today. And let me point out that approximately 90 percent of AGC's member firms are small businesses, as defined by SBA's size standards.

Despite the fact that the set-aside program is not needed in construction, DOD and the SBA continue to administer the program in zealous fashion, annually setting aside a disproportionate number of construction projects for exclusive small business bidding, and continually reserving larger and larger construction projects for the set-aside program.

All of this, in our opinion, is of no real benefit to the average small business construction contractor. It is only providing the agencies with what are really meaningless statistics. It is inhibiting competition in an industry which thrives on competition. And it is increasing the cost of construction to the Government and to the taxpayer.

In the past, AGC has urged a moratorium on the use of set-aside programs in construction to confirm our contention that these programs are unneeded. This suggestion has, of course, not been implemented by SBA or DOD.

As a short-term alternative, AGC urges that a project volume limit, not greater than $2 million, be placed on the size of construction projects that can be set-aside for small business. This would limit set-asides to contracts that are truly of a size for small businesses and permit open competition on the remainder, to the benefit of the taxpaying public and in the interest of preserving free competition.

Thank you, Mr. Chairman. That concludes my prepared remarks, and I would certainly welcome any questions that the Chair may have.

[The statement of Mr. Bodenhamer follows:]

PREPARED STATEMENT OF

DOUGLAS M. BODENHAMER

REPRESENTING

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

BEFORE THE

SUBCOMMITTEE ON MILITARY INSTALLATIONS AND FACILITIES

OF THE

HOUSE COMMITTEE ON ARMED SERVICES

ON THE SUBJECT OF

SET-ASIDES IN THE MILITARY CONSTRUCTION PROGRAM

SEPTEMBER 26, 1985

AGC is:

* More than 32,000 firms including 8,400 of America's leading general contracting firms responsible for the employment of 3,500,000-plus employees;

* 110 chapters nationwide;

* More than 80% of America's contract construction of commercial buildings, highways, industrial and municipal-utilities facilities;

* Approximately 50% of the contract construction by American firms in more than 100 countries abroad.

My name is Douglas Bodenhamer and I am a small business construction contractor from Columbus, Georgia.

I am here today representing the Associated General Contractors of America. I am accompanied by John Gentille of the AGC staff. AGC is an association of some 32,000 firms including 8,400 general contracting firms. Approximately 90 percent of AGC's members are small businesses, as defined by the SBA's size standards. Despite this fact, the AGC membership has historically endorsed the position that the small business set-aside program is not needed in construction.

The Construction Industry Is A Natural Haven For Small Businesses

The construction industry is truly one of the last bastions of the free enterprise system, and as such, is a national haven for small businesses. This industry is typified by family-owned businesses which jealously guard their integrity and reputation in the community, in an extremely competitive and open industry. Construction is not dominated by a few firms, rather it is dominated by the open competitive bid system. That is, competition in terms of price and ability to complete the task determines which companies win contracts. Depending on the nature of the construction project, the general contractor may complete the work with his own forces, or may subcontract the speciality work as may be necessary to complete the job.

The industry is also one of but a few that permit an individual -- any individual -- to make a start with little or no capital. An emerging construction firm generally uses credit to buy materials and arranges for short term loans to pay for equipment rental

and labor costs. This ease of entry into the industry helps to safeguard and assure competition in the industry.

Early SBA Study Questioned the Need for Set-Asides in Construction

In 1963 the Administrator of the Small Business Administration directed that a study be instituted to look at the construction industry to detail its characteristics. The study looked at the economic factors that influence the industry to determine if the then-emerging SBA programs were applicable to construction. The findings of that study are as follows, and are as valid today as they were in 1963:

- "There can be no question but that the application of any measures of competitiveness to the building and construction industry would result in the conclusion that it should be ranked among the least concentrated or most competitive. It is not dominated by a few large firms.
- The industry is comprised of a very large number of enterprises.
- The industry is comprised of small enterprises by conventional standards.
- There is a very high rate of business births in construction. None of the major industry categories had an entrance rate as high as construction.
- The financial costs of entry to the industry are relatively low in many branches. Equipment may be rented. Workmen typically furnish their own tools. In many cases owners and clients may advance part of the capital.

- The scale of operations in the construction industry reaches efficient levels at a relatively small size. The technology of the industry does not require large scale operations and large capital costs, compared to industry generally, in order to achieve efficient operations.
- Construction enterprises have few fixed costs and move readily from locality to locality and even region to region, increasing materially the degree of competition in a single locality. Work opportunities attract bidders from far and wide.
- The bidding takes place on a specifically defined project. All bidders are furnished the same specifications and plans, and in the typical case, the competitors are bidding on a precisely defined and identical product.
- The subcontracting system, characteristic of construction projects, enhances the competitive nature of the industry. Each successful bidder may consider whether to perform the work or subcontract a portion of it in turn.
- Contractors face keen competition from prospective clients who prefer to perform work themselves. Industrial enterprises, householders, and local, state and federal government agencies affect competitive conditions in construction by performing an appreciable amount of construction work themselves.
- The above features of the construction industry suggest that the construction industry is already relatively highly competitive among sectors, and that the need

for using the influence of federal contracts to increase competitiveness deserves a low priority in construction. The use of set-asides in construction needs to be placed in this perspective."

AGC believes these facts lead inescapably to the conclusion that the characteristics of the construction industry assure ample opportunity for qualified contracting firms of all sizes to obtain a share of federal construction outlays.

Large firms, for example, place themselves at a competitive disadvantage if they compete for a project that is too small for them since they have to assign key management or supervisory personnel to such projects, or have to acquire such personnel. At that same time, such larger firms have to commit some of their bonding capacity for these small projects with the result that when they contemplate bidding on projects in their own construction marketplace level they are at a disadvantage with their real competitors because they may have dissipated their management and supervisory skills, their bonding capacity and their financial resources on projects that are outside the scope of their natural market area.

Construction Procurement Practices of the Department of Defense

Despite the fact that the small business set-aside program is unneeded in construction, this industry has continually been overly relied upon by the federal construction procuring agencies to meet their small business procurement goals. Since the Defense Department's procurement practices are of special interest to this Subcommittee, I would like to highlight DOD's practices

in this area:

- In FY 1984 the Department of Defense removed 80 percent of its construction contract actions from the open, competitive market and awarded them through the small business set-aside program or the 8(a) program. As the attached statistics (Attachment I) indicate, of 21,188 contract actions in FY '84, 17,055 were set-aside for exclusive bidding and award to small business or awarded through non-competitive 8(a) procedures. These statistics were provided to AGC by DOD.
- Under the Federal Acquisition Regulation, all contracts that have even the slightest possibility of being performed by a small business are set-aside, thus accounting for the 80 percent of DOD contract actions that were removed from the unrestricted market in FY '84. One might assume that the remaining 20 percent of the DOD construction market was awarded to non-small business firms. And yet, as the attached statistics (Attachment I) reveal, of the remaining 4,133 contract actions, small businesses were able to obtain 2,073, or 50 percent. Clearly, these statistics argue against the need for a set-aside program in construction procurement.
- Of the two methods in Federal procurement by which disadvantaged businesses are able to obtain prime construction contracts -- through the SBA 8(a) program or through the open competitive bid system -- there is little difference in the results. As the attached statistics (Attachment

I) also indicate, disadvantaged businesses actually obtained more contract actions through open competition than through the 8(a) program (1,051 8(a) contract actions vs. 1,697 competitively bid contract actions) in FY 1984.

- The architect/engineer segment of the construction industry is also subject to small business set-aside and 8(a) program requirements. For fiscal year 1984, however, Congress decided to limit the size of A/E contracts that could be set-aside for these programs. A cap was placed at $85,000, and no contracts valued at more than that amount could be set aside. Despite this limit, reference to the attached statistics (Attachment II) reveal that as many contract actions were awarded to small business A/E firms in FY 1984 (87%) as were awarded in FY '83 (87.5%) and, in fact, a greater dollar amount was awarded to small business A/E firms (FY '83 - 67.6%, FY '84 - 74.1%). Once again, these statistics argue strongly against the need for set-asides in the construction industry.

Small Business Set-Asides Are Not Necessary in Construction

In the construction industry small businesses are extremely competitive. They are quite capable of competing head to head with firms that do not qualify as small according to SBA's ever-changing definitions. In the private sector there is no such thing as a set-aside program. Here the open, unrestricted competitive bid system determines which firm will be awarded

the contract. In the private sector smaller construction firms thrive and are able to obtain a fair proportion of the available market.

Set-Asides Cost the Taxpayer

It is admittedly difficult to place a dollar amount on the cost to the government of using small business set-asides, however, a good indication of the cost can be extrapolated from a 1976 Report of Consultants to the Army Corps of Engineers on small business set-asides in the dredging industry. The report found that "...low bids received under unrestricted advertisements were 9 percent lower than those received under set-asides..." AGC has projected this 9 percent figure to the total value of DOD construction contracts set-aside in FY '84, of just under $4 billion. AGC estimates that the set-aside program cost DOD $356 million in restricted competition costs for that year alone.

One might at this point ask "How can it be assured that small business will maintain its share of the DOD construction market if set-asides are eliminated?," thus implying that small businesses are not as competitive. AGC's answer is that there is no question but that a contractor preparing his bid must not only look at the specifications, work involved, material costs and labor prices, but must also look at his competition. The more open the competition the closer the bidder must look at his price. Open competition is what the construction industry is all about. Open competition is what the government should be seeking to assure the highest quality product at the lowest possible price. With the use of the small business set-aside

program, competition is restricted and this is detrimental to all of the parties involved.

DOD Over-Reliance on Small Business Set-Aside Program

Why does the Department of Defense over-rely on the small business set-aside program, when it can be shown that the program is not needed in construction? An explanation for this question can be found by looking at the section of the Federal Acquisition Regulation (FAR) which spells out the procedures DOD must follow in implementing the small business set-aside program. The FAR requires that all construction contracts up to $2 million in value be automatically set aside for restricted bidding and award. It also requires that all other construction contracts should be set aside if the contracting officer expects that two responsible small businesses will bid on a contract and also expects that the award will be made at a "reasonable price." This broad language and subjective terminology leaves contracting officers with very little discretion in making the choice to restrict competition.

There are apparently no guidelines on what represents a "reasonable price." There is also apparently no requirement that the contracting officer look at the requirements of the project to see if it is even within the capabilities of a small business. He or she need only guess that two small business firms may be willing to bid on the project. It is not at all uncommon, therefore, for construction projects in the $5 to $15 million range to be set-aside for exclusive bidding by small business firms. (See, for example, the attached preinvitation

notices for construction projects at the Great Lakes Naval Training Center.)

In today's market, it is not unusual for 15 or more contractors to bid on available contracts, and not unusual for even the highest of the 15 bids to be below the government's estimate. Given the broad language of the regulation, and despite the fierce competition in the construction market, a contracting officer can literally decide that all construction contracts must be set-aside for restricted bidding and award to small businesses. In AGC's opinion this exceeds the actions necessary to implement the overriding theme of the Small Business Act, which is to strike a balance between large and small businesses in the award of Federal contracts.

The SBA 8(a) Program

An even greater example of reduced competition and the resulting cost is the SBA 8(a) program. Under the 8(a) program, the SBA and a federal contract awarding agency agree to remove a contract from the open, unrestricted competitive bid system and sole-source negotiate the price for completing the work with a "disadvantaged" small business firm. Over the years numerous GAO reports, Congressional hearings and newspaper articles have pointed out the abuses and costs of this program.

The 8(a) program is basically incompatible with the construction industry because there is basically no competition for 8(a) contract awards. Additionally, 8(a) construction firms are permitted to subcontract up to 85 percent of the work. This in fact allows the 8(a) firm to act as little more than a broker.

Over the 8(a) program's history AGC has seen larger and larger construction contracts negotiated through the 8(a) program. In 1983 there were twenty construction contracts given to 8(a) firms that were valued at over $3 million. Two of these contracts were valued at $7 to $10 million and, incredibly, two were valued at $10 to $15 million. Few firms that SBA defines as small business would have the bonding capacity to perform contracts of this size. It is extremely difficult to understand how any business that can undertake projects in the $10 to $15 million range can be considered "disadvantaged."

The Department of Defense has, of course, been a major contributor of contracts for use in the 8(a) program. In Fiscal Year 1984, DOD had 1051 contract actions with 8(a) firms valued at $361 million. The question this raises is, "What was the cost?" AGC has found several examples of increased costs on 8(a) contracts of from 15 percent to 55 percent. In addition, a Federal Highway Administration study has found that 8(a) construction contract prices averaged nearly 11 percent more than competitively bid contracts. What is the additional cost to DOD of using the 8(a) program? AGC does not have the answer to this question, but suggests it is a question that the Subcommittee should consider looking at further.

Recommendations

In the past, AGC has urged a moratorium on the use of the small business set-aside program and the 8(a) program in construction to confirm our contention that these programs are unneeded. This suggestion has of course not been implemented by SBA or

DOD. It is AGC's contention that a moratorium will result in little change in the number of contract actions that are awarded to small businesses by DOD or any other Federal agency. AGC views a moratorium as a true test to see if a government program which has been in effect for over 30 years is still necessary. Such a test has never been undertaken. As the Federal government, and the Defense Department in particular, are looking for ways to reduce expenditures, AGC suggests that now would be the ideal time to take a hard look at the procurement procedures currently being followed.

As a short term alternative AGC urges that a project volume limit, not greater than $2 million, be placed on the size of construction projects that can be set-aside for small business. This would limit set-asides to contracts that are truly of a size for small businesses and permit open competition on the remainder, to the benefit of the taxpaying public and in the interest of preserving free competition.

It must be noted, however, that even the moratorium or the short term alternative of limiting the project volume to $2 million or less begs the question. AGC believes that the best interest of the taxpaying public and the construction industry would be served by total elimination of all special preference programs from the construction procurement system.

Permit the free market in construction to work -- and it will work in the public sector as it demonstrably works in the private sector.

DEPARTMENT OF DEFENSE
PRIME CONTRACT AWARDS OVER $25,000
FOR CONSTRUCTION

FISCAL YEAR 1984

DEPT	TOTAL ACTN	TOTAL $(000)	LARGE ACTN	LARGE $(000)	SMALL ACTN	SMALL $(000)	PCT OF SMALL ACTN	PCT OF SMALL AMT	SET-ASIDES ACTN	SET-ASIDES $(000)	SMALL DISADVANTAGED 8A ACTN	SMALL DISADVANTAGED 8A $(000)	SMALL DISADVANTAGED NON-8A ACTN	SMALL DISADVANTAGED NON-8A $(000)
ARMY	8,301	2,600,884	832	493,553	7,469	2,107,331	90.0	81.0	6,330	1,693,494	457	188,648	627	148,782
NAVY	6,219	1,766,390	460	294,512	5,759	1,471,878	92.6	83.3	4,634	1,127,595	143	38,348	672	132,143
A F	3,908	973,348	146	170,248	3,762	803,100	96.3	82.5	3,421	722,143	217	58,350	286	46,411
DLA	61	6,509	2	95	59	6,414	96.7	98.5	37	4,085	19	2,181	5	388
OCE	2,699	1,323,486	620	695,392	2,079	628,094	77.0	47.5	1,582	405,380	215	73,689	107	24,335
DOD	21,188	6,670,617	2,060	1,653,800	19,128	5,016,817	90.3	75.2	16,004	3,952,697	1,051	361,216	1,697	352,059

ATTACHMENT I

ARCHITECT AND ENGINEERING AWARDS FOR CONSTRUCTION 1/
(EXCLUDING NAVAL A&E)
(AMOUNTS IN THOUSANDS)

	TOTAL A & E		LARGE AND SMALL BUSINESS						SET-ASIDES				SMALL DISADVANTAGED							
			LARGE		SMALL		PCT OF SMALL		SET-ASIDES		PCT OF TOTAL		NON-8A		8A		TOTAL SM-DIS		PCT-TOTAL	
	ACTNS	$(000)	ACTNS	$(000)	ACTNS	$(000)	ACTN	AMT	ACTNS	$(000)	ACTN	AMT	ACNS	$(000)	ACNS	$(000)	ACNS	$(000)	ACTN	AMT
ARMY (Excluding Civil Functions)																				
FY 80	1,275	76,769	284	32,735	991	44,034	77.7	57.4	92	5,016	7.2	6.5	94	3,962	8	209	102	4,171	8.0	5.4
FY 81	1,716	96,517	254	25,630	1,462	70,887	85.2	73.4	663	33,252	38.6	34.5	174	7,162	17	625	191	7,787	11.1	8.1
FY 82	2,216	137,984	230	36,716	1,986	101,268	89.6	73.4	1410	69,872	63.6	50.6	203	8,839	24	474	227	9,313	10.2	6.7
FY 83	1,722	194,451	235	69,832	1,487	124,619	86.4	64.1	1,306	104,753	75.8	53.9	201	14,290	7	1,800	208	16,080	12.1	8.3
FY 84	2,123	205,200	303	58,886	1,820	146,314	85.7	71.3	1,392	106,977	65.6	52.1	228	16,076	11	908	239	16,984	11.3	8.3
CIVIL FUNCTIONS																				
FY 80	383	23,240	98	9,671	285	13,589	74.4	58.4	16	1,312	4.2	5.6	32	1,060	4	600	36	1,660	9.4	7.1
FY 81	488	26,987	114	17,106	374	14,876	76.6	55.1	79	3,266	16.2	12.1	38	1,002	7	252	45	1,254	9.2	4.6
FY 82	319	15,295	99	7,348	220	7,947	69.0	52.0	109	3,564	34.2	23.3	47	1,088	-	-	47	1,088	14.7	7.1
FY 83	141	12,675	29	3,725	112	8,950	79.4	70.6	83	5,874	58.9	45.9	15	662	7	309	22	971	15.6	7.7
FY 84	154	10,022	18	1,314	136	8,708	88.3	86.9	117	6,888	76.0	68.7	10	444	4	600	14	1,044	9.1	10.4
NAVY																				
FY 80	1,342	80,123	95	8,563	1,247	71,560	92.9	89.3	575	31,921	42.8	39.8	140	6,420	2	849	142	7,269	10.6	9.1
FY 81	1,664	99,269	143	17,497	1,521	81,772	91.4	82.4	1,229	67,055	73.9	67.6	188	8,720	2	105	190	8,825	11.4	8.9
FY 81	2,234	139,772	148	25,811	2,086	113,961	93.4	81.5	1,903	95,091	85.2	68.0	282	12,051	-	-	282	12,051	12.6	8.6
FY 82	1,884	206,834	241	64,733	1,643	142,101	87.2	68.7	1,472	122,402	78.1	59.2	225	16,446	3	189	228	16,635	12.1	8.0
FY 83	1,816	179,142	203	44,676	1,613	134,466	88.8	75.1	1,242	99,815	68.4	55.7	214	16,716	1	160	215	16,876	11.8	9.4
AIR FORCE																				
FY 80	148	10,052	13	1,439	135	8,613	91.2	89.9	46	2,166	31.1	15.4	16	935	4	266	20	1,181	13.5	8.4
FY 81	222	11,557	22	2,305	200	9,252	90.1	80.1	158	6,664	71.2	55.9	29	1,309	2	43	31	1,352	14.0	11.7
FY 81	519	19,950	74	1,855	445	18,095	95.4	90.7	380	13,597	73.2	68.2	77	3,057	10	215	87	3,272	16.8	16.4
FY 82	519	19,950	74	1,855	445	18,095	95.4	90.7	380	13,597	73.2	68.2	77	3,057	10	215	87	3,272	16.8	16.4
FY 83	247	17,513	13	1,529	234	15,984	94.7	91.3	189	12,770	76.5	72.9	36	2,328	4	265	40	2,593	16.2	14.8
FY 84	234	18,783	18	2,033	216	16,750	92.3	89.2	148	10,757	63.2	57.3	37	2,366	-	-	37	2,366	15.8	12.6
DLA																				
FY 80	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
FY 81	1	13	-	-	1	13	100.0	100.0	1	13	100.0	100.0	-	-	-	-	-	-	-	-
FY 81	11	184	-	-	11	184	100.0	100.0	10	167	90.9	90.8	-	-	-	-	-	-	-	-
FY 82	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
FY 83	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
FY 84	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
TOTAL DOD																				
FY 80	3,148	194,204	490	56,408	2,658	137,596	84.4	70.9	729	40,415	23.2	20.8	282	12,357	18	1,924	300	14,281	9.5	7.4
FY 81	4,091	234,318	533	57,538	3,558	176,780	87.0	75.4	2,130	110,050	52.1	47.0	429	18,193	28	1,025	457	19,218	11.2	8.2
FY 81	4,891	234,318	533	57,538	4,358	176,780	89.1	75.4	2,130	110,050	52.1	47.0	609	25,035	34	689	643	25,724	12.1	8.2
FY 82	5,299	313,835	501	71,739	4,798	241,455	90.5	77.1	3,812	167,291	71.9	58.1	477	33,716	21	2,563	498	36,279	12.5	8.4
FY 82	5,299	313,835	501	71,739	4,798	241,455	90.5	77.1	3,812	167,291	71.9	58.1	477	33,716	21	2,563	498	36,279	12.5	8.4
FY 83	3,994	431,473	518	139,819	3,476	291,654	87.0	67.6	2,950	245,749	76.4	57.0	477	33,716	16	1,668	505	37,270	11.7	9.0
FY 84	4,327	413,147	547	106,999	3,780	306,238	87.5	74.1	2,899	225,637	67.0	54.1	489	35,602						

1/ This table presents all A&E actions (minus A216 marine A&E) that are for construction (CZ in item 10C) for work performed in the U.S. and its possessions.

ATTACHMENT II

PRE-INVITATION NOTICE FOR BIDS NORTHNAVFACENGCOM 4330/24 (7-79) PLATE NO. 2002

CONSTRUCTION PROJECT

INVITATION NO.	DATE
N62472-83-B-0285	25 July 1985

GENERAL INFORMATION: Northern Division, Naval Facilities Engineering Command, Phila., Pa. expects to issue an invitation for Bids on/about September 1985 for a project entitled: PHYSICAL FITNESS CENTER

Bids will be opened on or about October 1985 Time for completion of work will be 450 days after date of Letter Notice of Award. An appropriate rating (DO or DX) will be assigned in accordance with DSAR Reg. 1 and/or DAR Reg. 1.

DESCRIPTION OF WORK TO BE PERFORMED:

The work includes the removal of existing Bldg. 500 including concrete footings, slabs, foundations, piping and stairs. The work also includes provision of a field house on concrete slab and related areas. Steel structure metal roof, precast cored slabs, membrane roof, brick and concrete masonry, acoustical tile, wood and synthetic sport floor, racquetball courts, atheletic and locker room equipment, plumbing, GVAC, wood and metal doors, site development, paving, athletic field, toilet accessories, painting, metal windows, ductwork, insulation piping, sesillent flooring, transformers, interior and exterior lighting, fire alarm system, intercom system, interior and exterior wiring and incidental work.

LOCATION OF PROJECT: NAVAL TRAINING CENTER, GREAT LAKES, IL

ESTIMATED COST RANGE $5,000,000 - $10,000,000

PRE-INVITATION NOTICE FOR BIDS - - - REQUEST CARD

INVITATION NO: N62472- 83-B-0285

(Please check the following as appropriate.)

WE ☐ ARE ☐ ARE NOT A SMALL BUSINESS CONCERN.

WE EXPECT TO SUBMIT A BID AS A:

☐ PRIME CONTRACTOR → NO. OF SETS _____.

☐ SUBCONTRACTOR OR MATERIAL SUPPLIER.

☐ WE DO NOT EXPECT TO SUBMIT A BID ON THIS WORK.

PLEASE ☐ RETAIN ☐ REMOVE OUR NAME ON/FROM YOUR LIST.

COMPANY NAME: _____

ADDRESS: _____

CITY & STATE: _____ ZIP _____

TELEPHONE: A/C _____ NO. _____

THIS PROJECT [7] IS ☐ IS NOT A 100% SET-ASIDE FOR SMALL BUSINESS CONCERNS.

BID REQUIREMENTS: Bid guarantee in a penal sum of 20% of the bid price not to exceed $3,000,000 will be required with each bid. An Annual Bid Bond will not be adequate. Performance and payment bonds will be required from the successful bidder.

OTHER CONTRACT PROVISIONS OR REQUIREMENTS: Prospective bidders should visit the site during the bidding period in order to acquaint themselves with site conditions and other problems incidental to construction. The bidding material will contain instructions for contacting the proper office for making the site inspection arrangements.

INFORMATION ON OBTAINING DRAWINGS, SPECIFICATIONS, AND BIDDING MATERIAL:

(1) Bid material (including half-size drawings and specifications) will be furnished without charge, when the Invitation for Bids is issued to those firms returning the Request Card imprinted to the left.

(2) Not more than 1 sets will be furnished to prospective prime contractors - 1 set to suppliers and subcontractors.

(3) If issuance of the Invitation for Bids is delayed for more than 30 days, or the project is withdrawn, appropriate notice will be issued.

(4) Full-size drawings will be available as indicated in the Invitation for Bids when issued.

(5) For information, call Ms. L. SEMOLA at A/C 215-897-6445

REQUEST CARD

The card in the lower left hand corner may be used to obtain further data. If no bid is to be submitted, please advise whether future invitations for bids are desired. This information may be furnished by completing and returning the request card. Cut out card on the dotted line and add required postage.

ATTACHMENT III

PRE-INVITATION NOTICE FOR BIDS NORTHNAVFACENGCOM 4330/24 (7-79)

PLATE NO. 21007

CONSTRUCTION PROJECT

INVITATION NO.	DATE
N62472- 81-B-0402	25 July 1985

GENERAL INFORMATION: Northern Division, Naval Facilities Engineering Command, Phila., Pa. expects to issue an Invitation for Bids on/about September 1985 for a project entitled: UNACCOMPANIED ENLISTED PERSONNEL HOUSING

Bids will be opened on or about October 1985. Time for completion of work will be 480 days after date of Letter Notice of Award. An appropriate rating (DO or DX) will be assigned in accordance with DMSR Reg. 2 and/or DAR Reg. 1.

DESCRIPTION OF WORK TO BE PERFORMED:

The work includes the removal of existing foundations and utilities; and the construction of a four story personnel housing building with a structural steel frame and an exterior facade of brick veneer on structural steel studs. Also included are metal roof decks and concrete floors supported by steel joists. Roofing is a single ply membrane over rigid insulation. Windows are aluminum with insulated glazing and frames; exterior windows in stair towers are insulated aluminum storefront construction with insulated glazing. Interior construction includes lath and plaster on metal, stud partitions, aluminum, hollow metal and wood doors, ceramic floor and wall tile suspended acoustical ceilings, resilient flooring, painting, carpet toilet partitions, air handling units, ductwork, refrigeration equipment, HVAC, fire protection, transformers, lighting fire alarm system and intercom system. Exterior work includes storm and sanitary sewers, earthwork electrical and water distribution systems, lighting, paving, and landscaping. Incidental related work is also included.

LOCATION OF PROJECT:	ESTIMATED COST RANGE
NAVAL TRAINING CENTER, GREAT LAKES, IL	$10,000,000 - $15,000,000

PRE-INVITATION NOTICE FOR BIDS - - - REQUEST CARD

INVITATION NO: N62472- 81-B-0402

(Please check the following as appropriate)

WE ☐ ARE ☐ ARE NOT A SMALL BUSINESS CONCERN.

WE EXPECT TO SUBMIT A BID AS A:

☐ PRIME CONTRACTOR → NO. OF SETS _____.

☐ SUBCONTRACTOR OR MATERIAL SUPPLIER.

☐ WE DO NOT EXPECT TO SUBMIT A BID ON THIS WORK.

PLEASE ☐ RETAIN ☐ REMOVE OUR NAME ON/FROM YOUR LIST.

COMPANY NAME: _____

ADDRESS: _____

CITY & STATE: _____ ZIP_____

TELEPHONE: A/C _____NO._____

THIS PROJECT [X] IS ☐ IS NOT A 100% SET-ASIDE FOR SMALL BUSINESS CONCERNS.

BOND REQUIREMENTS: Bid guarantee in a penal sum of 20% of the bid price not to exceed $3,000,000 will be required with each bid. An Annual Bid Bond will not be adequate. Performance and payment bonds will be required from the successful bidder.

OTHER CONTRACT PROVISIONS OR REQUIREMENTS: Prospective bidders should visit the site during the bidding period in order to acquaint themselves with site conditions and other problems incidental to construction. The bidding material will contain instructions for contacting the proper office for making the site inspection arrangements.

INFORMATION ON OBTAINING DRAWINGS, SPECIFICATIONS, AND BIDDING MATERIAL:

(1) Bid material (including half-size drawings and specifications) will be furnished without charge, when the Invitation for Bids is issued to those firms returning the Request Card reprinted to the left.

(2) Not more than 2 sets will be furnished to prospective prime contractors - 1 set to suppliers and subcontractors.

(3) If issuance of the Invitation for Bids is delayed for more than 30 days, or the project is withdrawn, appropriate notice will be issued.

(4) Full-size drawings will be available as indicated in the Invitation for Bids when issued.

(5) For information, call Ms. L. Semola at A/C 215-897-XXXX 6445

REQUEST CARD

The card in the lower left hand corner may be used to obtain further data. If no bid is to be submitted, please advise whether future Invitations for Bids are desired. This information may be furnished by completing and returning the request card. Cut out card on the dotted line and add required postage.

ATTACHMENT IV

Mr. DELLUMS. Then you are opposed to set-asides whether they are for small business or minorities, or for women?

Mr. BODENHAMER. That is correct; we are against any type of restricted competition in the construction industry for any specialized or preferred group.

Mr. DELLUMS. I would like to—I am not quite sure I understand why—you mentioned generally something about impeding competition.

Mr. BODENHAMER. Yes, sir.

Mr. DELLUMS. I sit on this committee, and I have seen, as you have, $600 toilets, $1,000 wrenches, the whole bit. So, being large, being private, being competitive does not safeguard us from extraordinary megabillion dollar ripoffs.

Mr. BODENHAMER. No.

Mr. DELLUMS. That is, obviously, not the issue here. It seems to me what the set-aside program goes to is a much more fundamental policy question in our society. We are a society that is multiracial, multiethnic—if you will allow me to talk about set-asides for minorities and women. Minorities and women, by virtue of their experience, have been denied the opportunity to compete competitively. I think we all tend to agree that people are able to compete effectively when they come from the same experience base.

The great tragedy has been that because of the nature of our society, women have not had the opportunity to gain the necessary experience that would allow them to compete effectively in a society that has been quite male oriented.

Minorities, for all the obvious reasons that we don't have to go into now, we all know—we are all conscious of them, we are aware of them—have not had the opportunity to gain the necessary experience to compete effectively. For example, I have been here 15 years; I can compete with you or anybody else doing my job because I have experience doing it. But before I had the opportunity to get here, how could I compete with my colleagues? But I have experience. I sit here with them, so I can compete on the floor of Congress.

The point being that once one is able to gain the necessary experience, competition becomes an easy thing to do. But the set-aside program has provided the entry to the experience which allows one to gain the necessary expertise to be able to compete competently, efficiently and effectively.

So it is from that policy framework that, as a result of the fact that we are an able society of a wide range of human beings, that in 1985 we agreed that we are all equal human beings, men and women, black, brown, red, yellow, and white, and so that we want everybody to be able to compete at that level. But in some way we have to overcome the historical problems that have not allowed them to compete effectively.

How do you answer that question, because we are here charged with the responsibility of trying to establish policy? You sat through these proceedings. Certainly, the Chair has tried to deal with these hearings with as much objectivity and fairness as possible. We are here to try, because we could hold these hearings 50 different ways. I have chosen to come down the road to become as educated and knowledgeable as possible.

Mr. BODENHAMER. Yes, sir.

Mr. DELLUMS. How do you handle that policy concern when the issue here is one of justice and equity and fairness?

Mr. BODENHAMER. Let me say a couple of things in response to that. First of all, I commend you on being in Congress 15 years. I am sure you didn't get here as a result of a preferential program that allows you preference over someone else. You got here through your own effort and based on your own perseverance in the past.

Mr. DELLUMS. I am not sure that is quite true. A lot of people said in 1970, let's get beyond this guy's race and give him an opportunity to demonstrate he is competent.

Mr. BODENHAMER. That is the point I am making.

Mr. DELLUMS. They joined up. And I represent a predominately white congressional district; only 18.2 percent black.

Mr. BODENHAMER. I commend you. I think this is the way members of any group should be collected.

Let me address one of the things you mentioned—$600 toilet seats and $500 wrenches. I would like to clear the air.

Number one, these are sole-source items of supply that we are speaking of in a select area of the Department of Defense procurement. Certainly, I don't think they have anything to do with military construction, which we are addressing at these hearings. But, yes, I think that what you are saying is that in the past possibly there have been some areas that, maybe in the private sector, possibly there has been some preferential treatment.

I have been involved with Defense Department construction myself for some 20 years, with other firms other than my own. I have never seen what I would consider a preferential treatment to any ethnic group, race, color, creed, whatever, female, whatever the case may be. I have never seen a preference given to a particular group. It always seemed to me to be based on ability and price.

Mr. DELLUMS. Are you a veteran? We have preference.

Mr. BODENHAMER. No, I was not in the military. I was speaking in terms of award of construction contracts to particular firms.

Mr. DELLUMS. I was talking about the concept of preference.

Mr. BODENHAMER. Sure, we have many concepts of preference in the Government; I understand that.

I am not sure if I am answering your question directly or not, but I do know that if you have an open competitive bid society in the Defense Department work, then you are going to get for the taxpayer the lowest price for the dollar, the best job for the dollar. And I think the statistics of the Defense Department itself prove this fact—that, in fact, we have open, unrestricted bidding, that actual dollars of tax are saved.

Mr. DELLUMS. Were you here this morning when the Government witnesses were testifying, the Department of Defense?

Mr. BODENHAMER. No, sir, I was not.

Mr. DELLUMS. This morning—and the Chair would certainly stand corrected—but we did not receive any testimony from the Department of Defense witness that the set-aside program in any way thwarted the program; it didn't escalate cost. As a matter of fact, we asked that question very directly: Did it adversely impact upon the cost? The answer, as the Chair understood it, was, no, cer-

tainly the competence level was not questioned, if my memory serves me correctly.

The woman who testified for the Department of Defense indicated that they let a figure of $6.9 billion worth of military construction programs, of which $713 million went to minority firms.

Mr. BODENHAMER. Right.

Mr. DELLUMS. And that still leaves almost $6.2 billion in contracts. I don't understand.

Mr. BODENHAMER. We are addressing also the small business setaside, certainly not just 8(a) minority or underprivileged groups.

Mr. DELLUMS. You have less problem with the 8–A program than the small business.

Mr. BODENHAMER. I personally have problems with all preferences, set-asides. I feel like an unrestricted competitive market is the way that the business world, with Federal procurement, should proceed.

I think that the low dollar is the one that should get the contract. I think that there are certain restrictions inside the construction industry itself that establish whether or not a contractor is qualified to do a certain piece of work—that is, financial responsibility—which includes the ability to get bonding for a particular project; obviously, expertise.

These things are gained not through someone just saying, hey, you are a contractor and here is a bond; start building the job. These things are gained through working with others. I know I personally worked, you might say an apprenticeship, with other construction firms for 15 years before I felt I was qualified to start a firm I could run myself, and where I felt I had the capability and experience and financial responsibility to go out and compete on my own for construction projects.

I think this is the way that a construction firm is formed, when it is going to be lasting and durable and remain in the marketplace, and not simply because someone came over and handed me a contract and said, "This is yours; go build it." I don't think you are doing that person a favor if they don't have the tools to do the job that you are giving them to do. I think you are doing them a disservice.

I think if we can take these firms and bring them up in a manner of training them in certain areas to reach the level where they have the capabilities and experience to perform these contracts, this is where we are doing them a service; not by just saying you are a contractor and go build me a job. This has nothing to do with color, race, creed, gender or anything else. I am speaking of people.

You say this business is a very disciplined business; it is something that requires a lot of time and effort and apprenticeship time before you are really ready to go out and call yourself a contractor.

Mr. DELLUMS. Well, I can appreciate your perspective. I obviously don't agree with it, but I can understand it. And certainly my responsibility is to give you an opportunity to make that statement before the committee.

I would like to ask Mr. Thomas if he would like to respond.

Mr. THOMAS. Yes, sir, Mr. Chairman.

There seems to be a presumption in my colleague's argument that because the set-aside award is made, that it is automatically incompetent or that it is less than the competence that would have been achieved. And, as the chairman stated this morning, the Department of Defense testified there was no mass incompetence because of the set-aside.

Mr. DELLUMS. None whatsoever.

Mr. THOMAS. Second, this reminds me of an example of two people standing ready to run a 100-yard dash. Before they take off, one person has a 30-pound weight put on his left leg, and then they start running. The one without the weight is going to go out faster, is going to be way ahead of the one with the weight. When they get to the 50-yard line, someone says this is not fair because this person has a weight on him. So then they say, OK, take the weight off him.

Now, my colleague would have—OK, let's be fair—to take the weight, and let's start running again. What we are talking about is correcting the situation, correcting the past situation which caused the runner to be on the 30-yard line in the first place.

Now it may so happen if you bring them even, take the person from the 30-yard line and bring them to the 50 along with the other person, it may turn out that the person leading might well win anyway, and it might turn out that he won't. And all that we are saying, all that the set-aside program is about, is correcting the situation in which one runner had a weight on him for 50 and 30 yards.

So I would like to—I don't know that your question, Mr. Chairman, has been satisfactorily answered: How do you correct that type of situation? How do you correct the type of situation in which there has been injustice? Obviously, for many years minority contractors, if any existed, weren't getting contracts because they were minorities.

To bring up the question, you alluded to the fact that in 1970 the people finally put race behind them and elected the best man. What do you do prior to that time? What do you do prior? What do you do to correct the environment prior to the time that you want to be there?

Mr. BODENHAMER. In DOD procurement, here again, I say in my experience, for the past 25 years I have never known of a job to be awarded to other than the low responsive responsible bidder, and that award has been totally colorblind. I am not speaking of color and minority and race; I am speaking of small business set-aside in general. In my experience, I have never known that. It has always been to the low responsive responsible bidder.

Now, I don't think injustice has been done in Government procurement. What my colleague says, I can't say how that is the case. If what you are saying is, if there has been an effort to keep people in certain areas of life from becoming general contractors, I think that is something you are getting far afield from Defense Department procurement. I don't think that has anything to do with what we are speaking of here today.

One other thing. You mentioned something regarding incompetence. I don't think I referred to anyone as being incompetent. What I said is, it takes time to develop the expertise necessary to

do any job well in any area of our economy in this country. Certainly, construction is no different. But I was not—if I did make that inference, I certainly apologize because that was not intended.

Mr. THOMAS. Mr. Chairman, as I said, I was a lawyer. All that I can say is that Mr. Bodenhamer has lived a very fortunate life not to ever have seen discrimination in the construction industry, and has certainly lived a much more sheltered life than I have.

Discrimination in this country itself is—there is no need to go into the logistic or specificity, but it did occur, and there are people who are hurt by it. We don't start at yard 1. There has been things that have happened in the past that put certain people in our society at a disadvantage, and I still haven't heard an answer to how to deal with that. And until we get an answer to that——

Mr. BODENHAMER. May I try again?

Mr. DELLUMS. Yes. There was a question that the Chair was trying to——

Mr. BODENHAMER. I am certainly not dodging your question. I thought I was answering the question. Let me try one more time.

Again, I did not say I had never run into abuse or prejudice in society. I said with regard to Defense Department procurement, I have never seen this.

Mr. DELLUMS. Let's place it in some context, move it out of the lofty cloud. What we are talking about is money.

Mr. BODENHAMER. Right.

Mr. DELLUMS. Billions of dollars.

This committee here spends more money than any committee in the U.S. Congress. There are more lobbyists and contractors that sit in this room than you can shake a stick at every time we meet. So, I am no fool; I understand that that is what it is about, on more occasions than not.

There are times when we discuss policy. I came here to discuss policy and ideas, war and peace, and I found that a great majority of the time we are determining which contractors are going to get the contract, build the C–5A, going to build C–12, are you going to build whatever. I know that. Whether you are going to build DIVAD gun, whether you are going to build this missile or that missile, that is what it is about.

If you read the record, it is replete with hours and hours and hours of discussion, not on lofty questions of how we preserve the integrity of the planet, but it is on which contract gets awarded to what, which plane do we choose.

So the point I am making—I am going to come back to you—the point I am making is about money. If you take it to that, almost a crude, mundane, pedestrian level, what we are talking about is people having access to the largess of the Government. And there are taxpayers in this country, who are men and women—they are taxpayers in this country who cut across all class lines. There are taxpayers in the country who cut across all racial lines. The point being that people should have some kind of access to the largess of this Government.

One set of arguments says we don't want to pursue policies that take us toward the welfare state. Let's not have the Government involved in social program development, training programs, what-

ever. Then you have got one group of people who says, OK, you lock us out there; then it makes us the entrepreneurs.

Small businesses hire the largest number of people in this country; we all know that. Where labor is intensive is in small business. Where minorities tend to be employed is with minority firms.

So they said, make us entrepreneurs and we will hire our people. In your argument—you see, the problem with your argument is that you can't walk both sides of the street. It blows that away. If we don't provide the opportunity for people and make Government larger and larger to address the social problems of human beings, that is, the welfare state concept, then some kind of way you have to open up the doors of entrepreneurialship. And if the basis of history is that door has been closed, how do people get in to effectively participate for their fair share of the largess of this Government?

Why should a woman, for example, in America, who makes up 51 percent of the population, be denied the opportunity to engage in building projects, building child care centers and fitness centers and barracks, and whatever?

Mr. BODENHAMER. She should not be denied that right.

Mr. DELLUMS. The same way for blacks and red or yellow. That is our whole point, what we are not saying here, trying to unwrite incompetence or lack of capability. What we are simply saying is provide them with the opportunity to gain the necessary expertise so that they can, as they evolve, be able to effectively compete.

That is what the 8-A program was all about. That is why you graduate people out of it. That is why we are concerned about transition. You and I know there is competition, and there is competition. If you had to compete every single day against GE and Westinghouse, that was your competition, I guarantee you would be wiped out every single day because we could establish the criteria in such a manner you could not effectively compete with large corporations or international conglomerates. So you have got to establish the criteria that makes it fair for you to compete.

What this gentleman is saying—I think what these hearings are about—well, in part—is how do we make it effective so that minorities and women can also compete? That is not to the exclusion of you, because of your maleness nor the nature of your race, but because you may fall into that category we want to protect.

You mentioned earlier you are a small businessperson. We could establish criteria that would not allow you to make a dime because you couldn't compete effectively, where certain entities in the country who could build faster or whatever than you can. So the point is, it has to be adjusted, sense over equity, and we are simply suggesting that it should be at the Government level in a way that speaks of fairness and speaks to equity.

There are black, brown, red and yellow and white citizens, and men and women citizens, and they have to be able to have some capacity to effectively compete for the billions of dollars that I know this subcommittee, the committee authorizes every year. This subcommittee authorized $9 billion average in the 3 years that I have been here, $7 billion to $9 billion. That is an incredible amount of money. You lock out small business and you lock out minorities, who picks up all those funds?

Mr. BODENHAMER. My area of expertise is military construction, and certainly not competing with General Dynamics and General Electric or Westinghouse or these people in sole-source procurement.

Mr. DELLUMS. They could diverse and go into military construction.

Mr. BODENHAMER. Certainly they can, and I don't think they would. We say you can draw a set of specifications, or you can have a set of parameters in which we must compete with them. We have that. And every project calls for a set of plans and specifications for the project. This is what is established that we compete with.

If I am competing against Mr. Thomas or against Mr. Gentille, we are competing on the same basis. No, I feel that if I do not have the expertise and the ability within myself and within my company to compete with anybody in an open free market, and if they whipped me out, so be it.

Now, I don't think that will happen simply because the larger firms do not have the ability to get down to the smaller job levels. If, as we have proposed, that moratorium were established in a certain area for a certain percent of time to see what the difference in small business procurements are, procurements that were issued to small business firms with or without a preference set-aside program, I think you would be surprised to find that it wouldn't vary. If anything, it may increase.

In fact, within the military DOD awards in the 1984 fiscal year program, there were more of the dollar amounts, of percentages of volume of amount of money in that program awarded to small business contractors than were set-asides for small business contracts.

What I am saying is the small business contractors went beyond the set-aside and still got a larger share of the market simply because he is able to compete on that level. But, at the same time, if you create a certain artificial level that is beyond the ability of most small businesses to compete, then you create a void where no one could come in and compete or you are going to have a limited or maybe sole-source supply again that you are not trying to—don't want to have, or you are going to have a front organization. And you have heard all of this, and it is happening and continues to happen.

What we are saying is, if we don't get a moratorium, if we can't eliminate preferential set-aside programs, let's at least try to put a cap on it to some reasonable level that is truly small business, and not medium or probably even large business as we are seeing right now with the SBA program. I know in my case, we see now SBA—a contractor, to qualify, you have to have average annual receipts of not exceeding $17 million. I am a long way from that. If I double this year's volume of my company, I am still not going to exceed that, and we are doing fairly large jobs.

We are seeing SBA set aside jobs $10 million, $15 million. If I call and say I want to bid a $15 million job, they would have me committed to an insane asylum. Small businesses do not do jobs of this magnitude. Large jobs for small business concerns $2 million or $3 million. Beyond that, you are getting out of the small busi-

ness category. We have—the definitions SBA has established in this regard have gotten totally out of hand.

Mr. DELLUMS. The interesting thing is, you are challenging the great American dream, the great American dream, and dusting off your tennis shoe.

Mr. BODENHAMER. That is what our economy——

Mr. DELLUMS. How do you ever grow?

Mr. BODENHAMER. What was done—not because of preference. The program was created to allow you to do old-fashioned American sweat and hard work. That is how it is done.

Mr. DELLUMS. The point is, there has to be a vehicle that allows growth to take place. What you are arguing—I think if you listen to your own testimony, what you are arguing is keeping people in a box. That is fascinating.

Mr. BODENHAMER. No, no.

Mr. DELLUMS. The dream is not working.

Mr. BODENHAMER. I am saying create a box, if they are protected. But they can get out of the box and go anywhere they want. A small business firm is not limited on bidding on anything he wanted to bid in the construction industry. I can bid any job because it is not set aside—that just that certain measure of protection.

All I am saying is that measure of protection has grown to the point where it is beyond the realm of small business to handle its goods to get down to some reasonable level where it is truly small business as protective item and everything above that should be open competition.

Mr. DELLUMS. I am simply saying that people have to have an opportunity to be able to enter. If we were going to build all skyscrapers and we established criteria, that we know that you, a small business person from Georgia never built a skyscraper, and the number one criteria is you have to have experience at building skyscrapers, you are automatically wiped out.

Mr. BODENHAMER. I wouldn't want to build one.

Mr. DELLUMS. That is not the point. We are not here to jostle with each other. We can engage in a tap dance—I am certainly not—I am not suggesting that whatsoever. But the point being that you have got to be able to have the opportunity to gain the necessary capability to do that, so there has got to be some vehicle that allows you in. There has got to be establishment of criteria not designed to lock you out, but designed to give you the opportunity to develop the capability so that at some point you can say, "I can compete."

But if we develop the criteria in such a manner that you cannot compete, then I don't think that that is fair. And, as I said before, I—let's not repeat ourselves—I may not be able to convince you; you may not be able to convince me. The important thing is you had the opportunity to present your thoughts and your ideas before the committee. I certainly think we have to continue to try to operate with the sense of fairness and equity.

What happens in private industry, we hope that that is justice. But Government is the collective expression of people's will. And so it seems to me here, if no other place, we have to demand excel-

lence; we have to demand fairness and justice and equity for all human beings to the maximum extent possible.

I don't think the set-aside program, frankly, flies in the face of that. I think that what it does say is that we have to try to figure out how to compensate to the maximum extent possible and provide a mechanism by which people can develop the capacity to function and to grow.

Mr. BODENHAMER. We certainly appreciate the opportunity of being here today.

Let me say again, if nothing else, what we would like to see happen is this subcommittee take a hard look at the limits of the industry project size that small business allows and, if nothing else, if we can bring the individual project or procurement down to a level that is truly small business, then if nothing else the programs that we have established and are operating would have gained some reality in what they are trying to do.

But to, truthfully, say that a single construction contract, say $10 to $15 million, can be handled by true small business contractors is just not realistic. At some level, it has to be established, some criteria. A maximum level has to be established by SBA in determining set-asides. And we would certainly request that the subcommittee take a hard look at the statistics in this regard and how this is beginning to open up even more every year.

Mr. DELLUMS. Let me ask staff, of the projects that we authorize on an annual basis, what do you think the average amount of the contract that we authorize is?

Mr. TSOMPANAS. I would estimate probably between $3 and $4 million.

Mr. DELLUMS. What percentage of the programs we authorize fall in that range? 50 percent? 60 percent? 70 percent?

Mr. TSOMPANAS. I would venture between 30 and 35 percent.

Mr. DELLUMS. Of all the contracts?

Mr. TSOMPANAS. Ms. Moore might have an opinion.

Ms. MOORE. No.

Mr. DELLUMS. I forgot. I don't recall the testimony of what percentage of the contracts did the Department of Defense indicate went to small business.

Mr. BODENHAMER. Seventy-five in 1984.

Mr. TSOMPANAS. Yes, sir; that is correct. Their testimony was that they placed $6.7 billion in awards for construction in fiscal year 1984, of which $5 billion or 75 percent was awarded to small construction firms. And the set-aside for small business amounted to $3.9 billion.

Mr. DELLUMS. I would appreciate it if the staff would get for us the average amount of each project in that 75.2 percent so we get a sense of the dollar figure we are talking about.

Mr. TSOMPANAS. Yes, sir.

Mr. DELLUMS. The point being maybe is a moot point, and I would like to find that out.

Are there any other comments either of you have to make before the subcommittee this afternoon?

Mr. THOMAS. Yes, sir, Mr. Chairman, just one final closing comment.

The Associated General Contractors of America have initiated a lot of suits and media lawsuits and media complaints which have taken all of our resources to justifying what is fair, justifying the simple fairness concept of set-asides. While we are spending our energy in that direction, we are missing the larger point, which is the set-aside program as it is being administered fairly. That is where I think our energies should be.

So, if this committee could allocate its time to spend a little percentage of it if possible in what Mr. Bodenhamer brought up as far as justifying the fairness——

Mr. DELLUMS. I think we are beyond that debate. I think Congress as a whole is beyond that debate. I was willing to engage the gentleman for all the obvious reasons.

I think you are correct—the Congress is beyond the idea of trying to rationalize the efficiency of a set-aside program. I think the overwhelming majority of my colleagues have gotten way beyond that issue. I think the great burden of our responsibility has to be whether or not the program as it is administered, as it is experienced by people, is being experienced equitably and fairly and efficiently and effectively. I think those are the answer.

But you are absolutely right. I think, with all due respect to the gentleman, Mr. Bodenhamer, in one sentence, this is retrogression to engage in the debate of whether or not set-asides are appropriate. I think the Congress also moved beyond that concept. I think this Nation as a whole has moved beyond that concept.

What we are now talking about is something entirely different. I tend to concur with the gentleman in that respect.

Mr. Bodenhamer, I wanted to make one comment to you. Our colleague, Mr. Ray, who is the Representative from Columbus, GA, a very distinguished and hard working member of this subcommittee, unfortunately was not able to be here this afternoon. I would like to, on his behalf, extend his apologies. He is in another subcommittee dealing with the Superfund, and the gentleman said welcome to Washington.

Unfortunately, many of us have to be in too many places at one time. And I am certain that if he was free, he would have been here. He is a very diligent member of the subcommittee and attends at a very high level, and is very productive in this subcommittee and certainly would have been here had he not had a meeting with the Superfund.

I can understand. We have to set priorities here. He wanted to extend his best wishes to you, and I am sure he will see you back home.

Mr. BODENHAMER. Please tell the Congressman I said hello.

[Mr. Martin submitted the following question to the witness to be answered for the record:]

Question. Mr. Bodenhamer, I understand that SBA's current size standard for general construction is $17 million. If you were given the authority to establish a new size standard, what would it be and why?

Mr. BODENHAMER. The current size standard of $17 million is certainly much too large. A construction firm doing that much volume on an annual basis is by no means a "small" business, and it by no means needs the "protection" of the small business set-aside program. A much more realistic size standard would be $2 million, with, and this is most important, a concomitant $2 million project volume cap being placed on the size of construction jobs which can be set aside for small busi-

ness. I would like to emphasize, however, that to make size standards or the size of small business set-aside projects more realistic really begs the real issue, which is that small business and 8(a) program set asides inhibit competition and are not needed, or even wanted by the construction industry.

DESIGN PROFESSIONALS COALITION

1201 Pennsylvania Ave., N.W. Suite 250 Washington, D.C. 20004
202/393-2426

TESTIMONY OF THE

DESIGN PROFESSIONALS COALITION

ON

PROCUREMENT OF ARCHITECT-ENGINEER SERVICES

AND

OPEN COMPETITION FOR FEDERAL CONTRACTS

BEFORE THE

SUBCOMMITTEE ON

MILITARY INSTALLATIONS AND FACILITIES

OF THE

COMMITTEE ON

ARMED SERVICES

UNITED STATES HOUSE OF REPRESENTATIVES

September 26, 1985

Chairman Dellums and Members of the Subcommittee on Military Installations and Facilities:

My name is James W. Poirot. I am from Denver, Colorado and serve as Chairman of the Board of Directors of the consulting engineering firm of CH2M HILL. I also function as Chairman of the Design Professionals Coalition (DPC). The Design Professionals Coalition is made up of forty-nine leading American Architect-Engineer companies. We individually and collectively provide our varied and highly specialized professional services to private industry and governments at all levels. Our work is both domestic and international.

DPC welcomes this opportunity to comment on selection of and competition for Architect-Engineer (A-E) services for Military Construction and related programs. We endorse the statement submitted by the Committee on Federal Procurement of Architectural-Engineering Services, which represents the nation's major architectural, engineering and surveying societies. DPC's comments address two subjects of great importance to us, and, we believe, the Federal Government and the taxpayers who pay for our national defense programs. These include: (1) Procurement of Architect-Engineer services; and (2) Opportunities for A-E firms of all sizes to compete for Federal contracts.

Let me begin by stating our commitments to qualification-based A-E selection and maximum competition for contracts. Competition brings out the best in us and helps provide the highest quality goods and services for our clients, whether they be taxpayers or the private sector.

Quality-based selection for A-E services dates from the 1860s and has long enjoyed support from Government agencies and industry. Contemporary quality-based A-E selection has been required through the Brooks' Law (P.L. 98-582) since 1972. It was was codified as permanent law for the Department of Defense in P.L. 97-214, after being required for many years on an annual basis through authorization bills. All requirements for these Federal projects are advertised in the Commerce Business Daily. The Brooks' Law approach enables contracting officers to match the size and qualifications of firms with the requirements of the jobs, including size, proximity to the project and the capabilities required. When permitted to work unimpeded by unworkable set-asides, it has consistently provided opportunities to firms of all sizes and backgrounds. It is highly competitive, very effective, and produces superior quality products for the taxpayers.

From time to time, there are those who simplistically propose that A-E services be selected on the basis of price alone or price in combination with some other criteria. Whenever the subject of price enters the picture before qualifications, it invariably becomes the sole determining factor in selections. Price bidding can also unfortunately result in "buy-ins" with resultant change orders and increases in costs.

Those claiming need for a test of bidding alternatives need only look at the ten-year Maryland experience. Maryland, the only state to previously require bidding for A-E services, recently repealed that statute in favor of a "mini-Brooks' Law" approach because bidding for A-E services was more costly, time-consuming, and less effective.

In addition to opposing changes in the current proven method for selecting A-E contractors, DPC is opposed to removing the cap on A-E set-asides. Lest the issues be clouded by understandable emotions generated by the words "small business," it is important that we examine the origins of the cap and what it does:

- It became law (P.L. 98-407) only after three years of fruitless negotiations with DOD officials over potential relaxation of the "rule of two" to afford A-E firms of all sizes the opportunity to compete for Government work and with SBA officials (still on-going) about reductions in A-E size standards to something approximating reality for our industry.

- IT DOES NOT PRECLUDE ALL SMALL FIRMS FROM COMPETING FOR ALL A-E CONTRACTS!

- IT CONTINTUES TO SET-ASIDE ALL CONTRACTS BELOW THE CAP EXCLUSIVELY FOR SMALL BUSINESSES.

- It enhances competition by permitting "large" A-E firms to compete for those DOD contracts which are above the current threshhold--$85,000.

- It is not fixed at $85,000. That figure was used since it was first suggested by DOD officials as a logical break point between small and large A-E contracts, which average about $60,000. Starting in FY 1986, the Secretary of Defense has the authority to annually adjust the cap if necessary.

- IT AFFORDS COMPANIES OF ALL SIZES OPPORTUNITIES TO COMPETE FOR DOD WORK WITHOUT HURTING SMALL BUSINESS OPPORTUNITIES. According to an attached June 27, 1985, letter and accompanying data to Chairman Les Aspin from Captain M.M. Dallam, OSD, Director of Construction, the cap appears to be working quite well. While the percentage of awards to small companies through set-asides has understandably decreased, the actual numbers of awards to such small firms remain about the same.

Repeal of limitations on excessive set-asides is unwise and unfair. It will result in a resumption of contracting practices which appear to favor substantial-sized companies "in the name of small business assistance," while actually discriminating against truly small companies and the few which happen to be classified as large. It will also reinstitute DOD's virtual total set-aside for A-E services under the "rule of two." The "rule of two" requires that, whenever a contracting officer <u>believes</u> there are two or more small businesses available to fulfill a contract at a reasonable price, it and the entire class of contracts must be set-aside for Small Business.

A close examination of our industry and figures from the most recently published U.S. Census of Service Industries (1977) illustrates why this is so. In the 30,000+ firm A-E industry, where the average company employs approximately 12 people and has gross annual revenues of between $500,000 and $1 million, the Small Business Administration's industry size standard classifies companies with up to about 200 employees and $7.5 million in gross annual revenue as "small". Thus, truly small firms--including almost all minority- and women-owned firms--must compete with companies many times their size, all within the category of "small" businesses. These truly small firms must compete at a disadvantage with virtually the entire industry for set-asides and other assistance instead of against their peers. Similary, the approximately 300 leading A-E firms which are not classed as small will face reinstitution of a virtual ban on competition for DOD contracts because there will almost always be two "small" firms available.

While we are cognizant of and encouraged by SBA's recently proposed rule which would lower the A-E size standard to $1.5 million, we have experienced a painful history of a half-dozen aborted SBA attempts since 1978 to make changes in this size standard. We'll believe it when we see it!

Be advised that by itself a lowered size standard is not the answer to assuring opportunities to compete for companies of all sizes. Without some limitation of the "rule of two," the modified size standard will simply disqualify several hundred more firms.

As I noted earlier, our industry made numerous unsuccessful efforts to enhance competitive opportunities for all firms in our industry through administrative means before Congress acted. We believe it helpful to briefly explore the chronological history of this issue from the origins of the "rule of two" through the extensive involvement by Congress to provide clear policy direction on this matter:

- The "rule of two" was first used by the Department of Defense in its Defense Acquisition Regulations (DAR) to set-aside whole classes of procurements late in the 1970s, including those for A-E services. While DOD cited 1978 amendments to the Small Business Act for doing so, Civilian Agencies, interpreting the same Act, did not find themselves required to include it in the Federal Procurement Regulations (FPR).

- The Committee on Federal Procurement of Architectural-Engineering Services (COFPAES) representing the major A-E societies, the Design Professionals Coalition, organizations representing the construction, dredging and clothing apparel industries and individual firms have been very active in raising questions about the "rule of two" and implementation of Small Business Set-Aside Programs for over five years.

- Constituent inquiries by Senators and Congressmen were first answered by DOD with claims that "there was no problem," "Congress made us do it", etc., and misleading statistics purporting to show that large A-E firms were obtaining most of the work. Only after repeated efforts by

numerous Senators and Congressmen did Secretary of Defense Weinberger acknowledge that there was a problem; corrected data showed "large" A-E firms were getting less than 20% of the contracts instead of the claimed 80%.

- COFPAES filed a formal DAR case with DOD requesting a change in the "rule of two" through modification of the Defense Acquisition Regulations (DAR) in November 1982. The DAR Council refused to take up the matter, claiming imminent implementation of then pending Federal Acquisition Regulations (FAR) precluded their action.

- Testimony was submitted to the Senate Small Business Committee on this matter during 1981 hearings. COFPAES and other industry witnesses testified before the Senate Armed Services Committee in 1982 and 1983.

- The Senate Armed Services Committee, supported by its House counterpart, concluded that there were inequities in A-E procurement opportunities. Report language, requiring DOD to modify its policies to ensure adequate contracting opportunities to truly small and large A-E firms, accompanied the FY '83 Military Construction Authorization. DOD ignored the Report language and was almost two months late with a required January 1, 1983 report that was judged unsatisfactory.

- The A-E community, which has tried repeatedly for Administrative relief, engaged in lengthy negotiations with DOD's Office of Small and Disadvantaged Business during the Spring of 1983. These negotiations produced an approach whereby all A-E Military Construction contracts of $85,000 or more would be open to competition by firms of all sizes under a "DAR deviation". This agreement was to have been announced in DOD's testimony before the Senate Armed Services Committee in April 1983. The DOD witnesses instead professed little or no knowledge of the problems and none of the agreement. They heatedly disclaimed that DOD had any responsibility for resolving this policy question.

- Chairman Thurmond and an angry Armed Services Committee then included the $85,000 threshhold for open competition for A-E Military Construction contracts in the FY '84 Authorization and accompanied it with strong supporting language in Senate Report No. 98-174.

- The Senate Appropriations Committee, also aware and concerned, included language in Senate Report No. 98-180 (accompanying the FY '84 Military Construction Appropriation) strongly supporting the Armed Services Committee's conclusions and actions.

- Faced with the prospects of permanent Congressional legislation on the matter, DOD agreed to the $85,000 open competition approach and implemented it as a "DAR deviation" in a June 24, 1983 Memorandum issued by James Brannan, Director of the DAR Council.

- An even stronger July 13, 1983 Memorandum was issued by Mary Ann Gilleece, then Deputy Under-Secretary of Defense.

- Just before Congress adjourned in August 1983, DOD officials persuaded Chairman Thurmond to remove the $85,000 threshhold requirements from

the Military Construction Authorization on the Senate floor, claiming that it was no longer necessary to legislate since the published Administrative remedy would accomplish the same objective.

- Within days after Congress adjourned for its August recess, the $85,000 threshhold policy was discarded by DOD.

- On September 19, 1983, the Federal Acquisition Regulation (FAR) was published in the Federal Register without benefit of public comment. The FAR requires the total set-aside of all contracts for A-Es and several other classes of procurements for using the "rule of two". Most commentors on an earlier draft of the FAR opposed inclusion of the "rule of two." It is interesting to note that the House Small Business Committee, in House Report No. 98-541, claimed credit for manipulating the "rule of two" into the FAR.

- Reacting to these actions, Congress included language in the Defense Appropriation for FY 1984 (P.L. 98-212), which stipulated that all DOD A-E projects with fees greater than $85,000 must be open for competition by firms of all sizes. This was done over the objections of DOD's Office of Small and Disadvantaged Business, the very Agency which proposed it to us.

- Despite P.L. 98-212's specifically naming the Department of Defense and its component services and not tying the language to the annual funds appropriated by it, DOD's implementing regulations astonishingly provided that the open competition requirement did not apply to the Corps of Engineers Civil Works Functions and was not permanent.

- Supported by Rep. Berkley Bedell, the House Small Business Committee attempted an "end run" by proposing a massive rewrite of Federal Procurement Law under the guise of "spare parts" reform in 1984. H.R. 2133, which proposed to write the "rule of two" into law, was opposed by this Committee and the Administration. It was finally smothered by a broadly based construction/A-E/business/industry/labor/university coalition led by five Committee Chairmen and their Ranking Minority Members, including those from the Armed Services Committee. Their efforts were supported by the Speaker of the House and numerous other Chairmen/Subcommittee Chairmen/Ranking Minority Members whose substantive programs would have been harmed.

- Later that year the House defeated a Rep. Berkley Bedell floor amendment to H.R. 5167, the Defense Authorization for FY 1985, which would have prohibited use of "open competition" threshholds and modified the Brooks' Law. He announced, but withdrew a similar proposed amendment to FY 1985 Military Construction Authorization.

- Acting on the initiative of the Senate Armed Services Committee, Congress made the "open competition" threshholds for DOD A-E contracts permanent in P.L. 98-407. An $85,000 threshhold is required for FY 1985; the Secretary of Defense was given authority to adjust it on an annual basis, beginning with FY 1986.

- Berkley Bedell again announced his intention to offer amendments to H.R. 1872, the FY 1986 DOD Authorization, to prevent use of "open competition" threshholds to limit set-asides and to modify the Brooks' Law. The amendments were subsequently withdrawn in the face of overwhelming opposition.

- Bedell has similar anti-competitive (to prohibit limitations on set-asides) and anti-Brooks' Law amendments pending to H.R. 1409, the FY 1986 Military Construction Authorization.

SUMMARY ON A-E SELECTION

Contracting for A-E services is not the buying of predetermined products. The government is instead obtaining the ideas, professional skills, creative talents and a level of effort in engineering and architectural fields. It's easy to bid on construction for a building or facility once one has the plans and specifications, but how do you bid on the ideas that created them? While A-E fees are typically a very small percentage of the overall construction costs, the A-E work product determines the total construction costs, the life-cycle costs, and the effective utilization of a facility. Supported by the American Bar Association's Model Code for Procurements and with well over a decade's experience at the Federal level, the qualification-based Brooks' Law method of selection is both cost effective and produces high quality products. It is now required by law in thirty-three states as well as for the Federal Government.

SUMMARY ON OPPORTUNITIES TO COMPETE

Aside from the obvious matter of fairness, there are some very practical reasons why this Committee should insist that large A-E firms be permitted to continue to compete for DOD contracts.

As industry leaders with outstanding reputations and companies whose performance and continued employment of their workers depends on a balanced client mix, we and our employees believe it is wrong that we might again be excluded from the Department of Defense marketplace just because our growth places us above some arbitrary size standard.

In a dynamic profession where experience, imagination, and commitment to excellence are hallmarks of success, we believe the Federal Government and ultimately the taxpayers lose in the long run by excluding the "state of the art" contributions which can be made by the leading and obviously successful companies who employ approximately 45% of the profession's total work force and creative expertise.

A point often overlooked is that large companies are also taxpayers. Since our taxes and those of our employees help provide the resources for purchasing Government goods and services, we ought not to be denied a chance to compete for work in the Federal markplace of our choice by a return of something as arbitrary as the "rule of two."

Large companies, with their important nationwide networks of branch offices and multi-disciplinary capabilities, are valuable assets in times of national emergency. The Senate Armed Services Committee concluded that to

properly utilize the nationwide resources of large companies during Mobilization or other national emergencies, DOD Agencies and large companies need to be familiar with each other. Mutual understanding of capabilities, procedures, management and regulations can not be achieved instantly--certainly not in time of crisis.

CONCLUSION

Mr. Chairman and Members of the Subcommittee, we urge your opposition to ill-advised efforts to amend the Brooks' Law and to inhibit competition in the procurement of Architect-Engineer services. Thank you for holding this hearing and giving us the opportunity to express these views.

Attachment

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, DC 20301-4000

MANPOWER
INSTALLATIONS
AND LOGISTICS

27 JUN 1985

Honorable Les Aspin
Chairman
Committee on Armed Services
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Your letter of June 11, 1985 asked for (1) data on architect-engineer contract awards since 1980 and (2) the set aside threshold the Secretary intends to use for FY 1986.

The data on A-E contract awards are attached. With the $85,000 set aside threshold in FY 1984, the set asides decreased slightly but the awards to small business A-E firms actually increased. This reinforces a belief held by many that small A-E firms are naturally more successful in obtaining small jobs and large firms more successful in obtaining large jobs, even under open competition.

The Office of the Secretary of Defense has not developed a position on adjusting the $85,000 set aside threshold since there has not been sufficient award experience to determine if a change should be made. The department, however, has always opposed a legislated set aside threshold. We believe the set aside program should be controlled through size standards. The current size standard for a small business A-E firm is so high that about 97% of the A-E firms are classified as small business firms.

If any legislative changes are made in the program, I ask that a transition period be provided. There was no transition period provided when the $85,000 set aside threshold was legislated. As a result, almost 40% of our A-E contracts in FY 1984 had to be readvertised. This delayed the design and execution of our construction program, caused extra work for the A-Es and increased administrative costs.

Please let me know if I can be of further assistance.

Sincerely,

M. M. Dallam
Captain, CEC, USN
Director of Construction

Attachment

ARCHITECT AND ENGINEERING AWARDS FOR CONSTRUCTION 1/
(EXCLUDING NAVAL A&E)
(AMOUNTS IN THOUSANDS)

	TOTAL A & E		LARGE AND SMALL BUSINESS						SET-ASIDES				SMALL DISADVANTAGED							
			LARGE		SMALL		PCT OF SMALL		SET-ASIDES		PCT OF TOTAL		NON-8A		8A		TOTAL SM-DIS		PCT-TOTAL	
	ACTNS	$(000)	ACTNS	$(000)	ACTNS	$(000)	ACTN	AMT	ACTNS	$(000)	ACTN	AMT	ACNS	$(000)	ACNS	$(000)	ACNS	$(000)	ACTN	AMT
ARMY (Excluding Civil Functions)																				
FY 80	1,275	76,769	284	32,735	991	44,034	77.7	57.4	92	5,016	7.2	6.5	94	3,962	8	209	102	4,171	8.0	5.4
FY 81	1,716	96,517	254	25,630	1,462	70,887	85.2	73.4	663	33,252	38.6	34.5	174	7,162	17	625	191	7,787	11.1	8.1
FY 82	2,216	137,984	230	36,716	1,986	101,268	89.6	73.4	1410	69,872	63.6	50.6	203	8,839	24	474	227	9,313	10.2	6.7
FY 83	1,722	194,451	215	69,832	1,487	124,619	86.4	64.1	1,306	104,753	75.8	53.9	201	14,280	7	1,800	208	16,080	12.1	8.3
FY 84	2,123	205,200	303	58,686	1,820	146,314	85.7	71.3	1,392	106,977	65.6	52.1	228	16,076	11	908	239	16,984	11.3	8.3
CIVIL FUNCTIONS																				
FY 80	383	23,260	98	9,671	285	13,589	74.4	58.4	16	1,312	4.2	5.6	32	1,060	4	600	36	1,660	9.4	7.1
FY 81	488	26,582	114	12,106	374	14,476	76.6	55.1	79	3,266	16.2	12.1	38	1,002	7	252	45	1,254	9.2	4.6
FY 82	319	15,295	99	7,348	220	7,947	69.0	52.0	109	3,564	34.2	23.3	47	1,088	-	-	47	1,088	14.7	7.1
FY 83	141	12,675	29	3,725	112	8,950	79.4	70.6	83	5,824	58.9	45.9	15	662	7	309	22	971	15.6	7.7
FY 84	154	10,022	18	1,314	136	8,708	88.3	86.9	117	6,868	76.0	68.7	10	444	4	600	14	1,044	9.1	10.4
AVY																				
FY 80	1,342	80,123	95	8,563	1,247	71,560	92.9	89.3	575	31,921	42.8	39.8	140	6,420	2	849	142	7,269	10.6	9.1
FY 81	1,664	99,249	143	17,497	1,521	81,752	91.4	82.4	1,229	67,055	73.9	67.6	188	8,720	2	105	190	8,825	11.4	8.9
FY 82	2,234	139,772	148	25,811	2,086	113,961	93.4	81.5	1,903	95,091	85.2	68.0	282	12,051	-	-	282	12,051	12.6	8.6
FY 83	1,884	206,834	241	64,733	1,643	142,101	87.2	68.7	1,472	122,402	78.1	59.2	225	16,446	3	189	228	16,635	12.1	8.0
FY 84	1,816	179,142	203	44,676	1,613	134,466	88.8	75.1	1,242	99,015	68.4	55.3	214	16,716	1	160	215	16,876	11.8	9.4
AIR FORCE																				
FY 80	148	14,052	13	5,639	135	8,413	91.2	59.9	46	2,166	31.1	15.4	16	915	4	266	20	1,181	13.5	8.4
FY 81	222	11,557	22	2,305	200	9,252	90.1	80.1	158	6,464	71.2	55.9	29	1,309	2	43	31	1,352	14.0	11.7
FY 82	519	19,950	24	1,855	495	18,095	95.4	90.7	380	13,597	73.2	68.2	77	3,057	10	215	87	3,272	16.8	16.4
FY 83	247	17,513	13	1,529	234	15,984	94.7	91.3	189	12,770	76.5	72.9	36	2,328	4	265	40	2,593	16.2	14.8
FY 84	234	18,783	18	2,033	216	16,750	92.3	89.2	148	10,757	63.2	57.3	37	2,366	-	-	37	2,366	15.8	12.6
DLA																				
FY 80	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
FY 81	1	13	-	-	1	13	100.0	100.0	1	13	100.0	100.0	-	-	-	-	-	-	-	-
FY 82	11	184	-	-	11	184	100.0	100.0	10	167	90.9	90.8	-	-	-	-	-	-	-	-
FY 83	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
FY 84	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
NAVY DOD																				
FY 80	3,148	194,204	490	56,608	2,658	137,596	84.4	70.9	729	40,615	23.2	20.8	282	12,357	18	1,924	300	14,281	9.5	7.4
FY 81	4,091	234,318	533	57,538	3,558	176,780	87.0	75.4	2,130	110,050	52.1	47.0	429	18,193	28	1,025	457	19,218	11.2	8.2
FY 82	5,299	313,815	501	71,730	4,798	241,455	90.5	77.1	3,812	182,291	71.9	58.1	609	25,035	34	689	643	25,724	12.1	8.2
FY 83	3,994	431,473	518	139,819	3,476	291,654	87.0	67.6	3,050	245,749	76.4	57.0	477	33,716	21	2,563	498	36,279	12.5	8.4
FY 84	4,327	413,147	542	106,909	3,785	306,238	87.5	74.1	2,899	223,637	67.0	54.1	489	35,602	16	1,866	505	37,270	11.7	9.0
Half FY 84	876	90,968	105	23,064	771	67,904	88.0	74.6	719	62,151	82.1	68.3	103	6,148	1	260	104	6,448	11.9	7.1
Half FY 85	1,569	152,055	263	48,515	1,296	103,540	82.1	68.0	657	48,433	42.1	31.8	172	12,652	4	170	176	12,822	11.3	8.5

This table presents all A&E actions (minus 8216 marine A&E) that are for construction (C2 in Item 10C) for work performed in the U.S. and its possessions.

Mr. DELLUMS. I would like to thank you for appearing before the subcommittee. Unless there is further business to come before the subcommittee, we will stand adjourned subject to the call of the Chair.

[Whereupon, at 4:35 p.m., the subcommittee adjourned, subject to the call of the Chair.]

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